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**UNITED STATES DISTRICT COURT
 DISTRICT OF THE STATE OF SOUTH CAROLINA,
 FLORENCE DIVISION**

JIMMIE CALLUM, Jr.,

Plaintiff,

v.

**CVS CAREMARK CORPORATION;
 SOUTH CAROLINA CVS PHARMACY, LLC;
 CVS PHARMACY, INC.;
 MARK COSBY; DARREN TWEDELL;
 RENEE EDGE; DAVID PURDY; BILL
 POLAND; XIO SOSA; GINNY McCLURE;
 JIM KEELER; HARRIS CHISHOLM;
 SUSAN WEBB; JOSEPH CESSNA;
 TRAVIS COMBS; JOHN BRESCIA;
 NATASHA PENDERGRASS;
 ASHLEY GATES; PAUL ANDERSON;
 KEVIN ELLIOTT; JOHN ROBINSON;
 MATT LESNIAK;
 JOHN DOES 1-80, and
 JANE DOES 1-50,**

Defendants

Civil Action No. 4:14-cv-03481-RBH

JURY TRIAL DEMANDED

PLAINTIFF'S VERIFIED FIRST AMENDED COMPLAINT FOR DAMAGES AND

DECLARATORY and INJUNCTIVE RELIEF for: VIOLATIONS OF THE

AMERICANS WITH DISABILITIES ACT of 1990 [42 U.S.C. § 12101, *et seq.*];

DISCRIMINATION IN VIOLATION OF THE CIVIL RIGHTS ACT of 1964 [42 U.S.C.

§ 1981 (equal rights); § 1985 (conspiracy to interfere with civil rights); § 1986 (neglect to

prevent deprivation of rights); 42 U.S.C. § 2000d, *et seq.*]; DISCRIMINATION IN

VIOLATION OF THE AFFORDABLE CARE ACT [42 U.S.C. § 18116]; ASSAULT;

BATTERY; FALSE IMPRISONMENT; INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS; CIVIL CONSPIRACY; NEGLIGENCE; NEGLIGENT
SUPERVISION &/or RETENTION; INTERFERENCE WITH CONTRACT &/or
PROSPECTIVE CONTRACTUAL RELATIONS; UNFAIR TRADE PRACTICES

This lawsuit is brought due to violations by Defendants of, *inter alia*, public access laws under the ADA, not because of any structural physical barriers to access by a disabled person, but because of a pattern and practice of intentional exclusion of a disabled Marine Veteran due to protected characteristics of race, gender and disability in direct violation of provisions of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12101, et seq., the Civil Rights Act of 1964, 42 U.S.C. §§ 1981, 1985, 1986 and 2000d, and the Affordable Care Act (“ACA”), 42 U.S.C. § 18116, and the egregious actions undertaken by Defendants and/or those acting under their association or affiliation with Defendants against a Marine veteran suffering from a service-connected disability.

Defendants on several occasions intentionally discriminated against Plaintiff JIMMIE CALLUM, Jr., an African-American United States Marine Corps veteran with service-connected disabilities, every time he attempted to request a reasonable public accommodation. Defendants have welcomed similarly situated white female patrons who alleged similar disability.

Congress enacted the Civil Rights Act of 1964 to stop discrimination against minorities including people of African-American descent. The ADA was enacted because of pervasive discrimination against disabled persons and because discrimination is “a serious and pervasive social problem . . . [that includes] various forms of discrimination, including outright intentional exclusion.” 42 U.S.C. § 12101(a)(7). Congress explained, “individuals with disabilities are a discrete and insular minority who have been . . . relegated to a position of

Plaintiff JIMMIE CALLUM, Jr., an individual, by and through his attorney(s) and based upon his information and belief and as a result of his investigation to date, now hereby brings his Complaint against the Defendants enumerated above and others whose names are presently unknown for declaratory, injunctive, monetary, exemplary and other relief under federal and state laws that guarantee a disabled African-American United States Marine Corps Veteran equal rights to contract, access to and enjoyment of places of public accommodation, and rights to be free from, or otherwise hold those accountable for, tortious conduct, and hereby alleges as follows:

1. Plaintiff JIMMIE CALLUM, Jr., (hereinafter “JIMMIE CALLUM,” “JIMMIE CALLUM, Jr.,” and/or singly addressed as “CALLUM,” and/or singly addressed as “Plaintiff”) is, and at all times relevant hereto was, an African-American male individual over the age of 18 and a resident of South Carolina.

2. Upon information and belief and thereon alleged, Defendant CVS CAREMARK CORPORATION (hereinafter “CVS CAREMARK CORPORATION” and/or singly addressed as “CVS,” and/or singly addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is a Delaware Corporation with its Corporate Headquarters located at One CVS Drive, Woonsocket, Rhode Island 02895, IRS Taxpayer ID Number 05-0494040. On information and belief, from its Woonsocket, Rhode Island headquarters CVS CAREMARK CORPORATION manages and oversees 7,615 CVS/pharmacy retail stores including, though not limited to, most if not all of the CVS/pharmacy defendants named herein. (CVS Caremark

1 Corporation, *Form 10-Q Quarterly Report Pursuant to Section 13 or 15(d) of the Securities*
2 *Exchange Act of 1934*, Filed: May 02, 2014 (period: March 31, 2014), p. 12). CVS/pharmacy
3 is the retail division of CVS Caremark Corporation.

4 3. Upon information and belief and thereon alleged, Defendant SOUTH
5 CAROLINA CVS PHARMACY, LLC, (hereinafter “SOUTH CAROLINA CVS
6 PHARMACY, LLC,” and/or singly addressed as “CVS Defendant(s) and/or singly addressed
7 as “Defendant(s)”) is a South Carolina organized Limited Liability Corporation and is the
8 business entity which holds, governs or similarly controls and/or manages and oversees at least
9 some of the South Carolina-based CVS/pharmacy defendants named herein.

10 4. On information and belief, Defendant CVS PHARMACY, INC., (hereinafter
11 “CVS PHARMACY, INC.,” and/or singly addressed as “CVS Defendant(s) and/or singly
12 addressed as “Defendant(s)”) is a wholly owned subsidiary of Defendant CVS CAREMARK
13 CORPORATION. On information and belief, CVS PHARMACY, INC. is a Rhode Island
14 corporation with corporate headquarters at 1 CVS Drive, Woonsocket, Rhode Island, the same
15 location as its parent, CVS CAREMARK CORPORATION, and is the business entity which
16 holds, governs or similarly controls and/or manages and oversees at least some of the South
17 Carolina-based CVS/pharmacy defendants named herein.

18 5. On information and belief and thereon alleged, the CVS/pharmacy retail
19 locations at issue in this case are either an independent pharmacy, a chain pharmacy, a
20 supermarket pharmacy, or a mass merchandiser pharmacy that is licensed as a pharmacy by the
21 State and that dispenses medications to the general public at retail prices.

22 6. CVS/pharmacy retail establishments “participate in the administration of the
23 drug benefit added to the Medicare program under Part D of the Medicare Prescription Drug,
24 Improvement, and Modernization Act of 2003 (“Medicare Part D”) through the provision of
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1 services to (CVS) health plan clients and other clients that have qualified as Medicare Part D
2 prescription drug plans." CVS Caremark Corp., *Form 10-K, Filed 02/11/14 for the Period*
3 *Ending 12/31/13*, p. 4. CVS CAREMARK CORPORATION also owns ten distribution
4 centers located in Alabama, California, Hawaii, New York, Rhode Island, South Carolina,
5 Tennessee and Texas. *Id.*, at 21.

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7 7. Upon information and belief and thereon alleged, MARK COSBY (hereinafter
8 "MARK COSBY," and/or "COSBY," and/or singly addressed as "CVS" and/or singly
9 addressed as "CVS Defendant(s) and/or singly addressed as "Defendant(s)") is sued both
10 individually and in his capacity during all times relevant hereto as President of CVS/pharmacy,
11 the retail division of CVS Caremark, who during all times relevant to the facts as alleged herein
12 managed and/or oversaw the activities of the defendants and/or CVS/pharmacy retail stores
13 including, though not limited to, most if not all of the CVS/pharmacy defendants named herein.
14 By engaging in the conduct described in this Complaint, COSBY acted under the course and
15 scope of his employment for CVS. By engaging in at least some of the conduct described in
16 this Complaint, COSBY exceeded the authority vested in him as an employee of CVS and
17 committed acts of a personal nature and/or for personal and financial interest or gain.

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19 8. Upon information and belief and thereon alleged, DARREN TWEDELL
20 (hereinafter "DARREN TWEDELL," and/or "TWEDELL," and/or singly addressed as "CVS"
21 and/or singly addressed as "CVS Defendant(s) and/or singly addressed as "Defendant(s)") is
22 sued both individually and in his capacity as Regional Manager for CVS/pharmacy and/or CVS
23 Caremark Corporation and/or South Carolina CVS Pharmacy, LLC, and/or CVS Pharmacy,
24 Inc., for at least one or more of the South Carolina CVS/pharmacy locations at or through
25 which the relevant allegations occurred, during all times relevant to the facts as alleged herein.
26 By engaging in the conduct described in this Complaint, TWEDELL acted under the course
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1 and scope of his employment for CVS. By engaging in at least some of the conduct described
2 in this Complaint, TWEDELL exceeded the authority vested in him as an employee of CVS
3 and committed acts of a personal nature and/or for personal and financial interest or gain.

4 9. Upon information and belief and thereon alleged, RENEE EDGE (hereinafter
5 “RENEE EDGE,” and/or “EDGE,” and/or singly addressed as “CVS” and/or singly addressed
6 as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both individually and
7 in her capacity as Regional Manager for CVS/pharmacy and/or CVS Caremark Corporation
8 and/or South Carolina CVS Pharmacy, LLC, and/or CVS Pharmacy, Inc., for at least one or
9 more of the South Carolina CVS/pharmacy locations at or through which the relevant
10 allegations occurred, during all times relevant to the facts as alleged herein. By engaging in the
11 conduct described in this Complaint, EDGE acted under the course and scope of her
12 employment for CVS. By engaging in at least some of the conduct described in this
13 Complaint, EDGE exceeded the authority vested in her as an employee of CVS and committed
14 acts of a personal nature and/or for personal and financial interest or gain.

15 10. Upon information and belief and thereon alleged, DAVID PURDY (hereinafter
16 “DAVID PURDY,” and/or “PURDY,” and/or singly addressed as “CVS” and/or singly
17 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
18 individually and in his capacity as Vice President for CVS/pharmacy and/or CVS Caremark
19 Corporation and/or South Carolina CVS Pharmacy, LLC, and/or CVS Pharmacy, Inc., and who
20 oversaw at least one or more of the South Carolina CVS/pharmacy locations at or through
21 which the relevant allegations occurred, during all times relevant to the facts as alleged herein.
22 By engaging in the conduct described in this Complaint, PURDY acted under the course and
23 scope of his employment for CVS. By engaging in at least some of the conduct described in
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1 this Complaint, PURDY exceeded the authority vested in him as an employee of CVS and
2 committed acts of a personal nature and/or for personal and financial interest or gain.

3 11. Upon information and belief and thereon alleged, BILL POLAND (hereinafter
4 “BILL POLAND,” and/or “POLAND,” and/or singly addressed as “CVS” and/or singly
5 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
6 individually and in his capacity as Manager &/or Assistant Manager &/or Supervisor of
7 CVS/PHARMACY # 7159, located at 2884 Highway 17 North, Mount Pleasant, South
8 Carolina, during all times relevant to the facts as alleged herein. By engaging in the conduct
9 described in this Complaint, POLAND acted under the course and scope of his employment for
10 CVS. By engaging in at least some of the conduct described in this Complaint, POLAND
11 exceeded the authority vested in him as an employee of CVS and committed acts of a personal
12 nature and/or for personal and financial interest or gain.
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14 12. Upon information and belief and thereon alleged, XIO SOSA, *a.k.a.* XIOMARA
15 SOSA, (hereinafter “XIO SOSA,” and/or “SOSA,” and/or singly addressed as “CVS” and/or
16 singly addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
17 individually and in her capacity as Manager &/or Assistant Manager &/or Supervisor of
18 CVS/PHARMACY # 563, located at 1515 Old Trolley Road, Summerville, South Carolina,
19 during all times relevant to the facts as alleged herein. By engaging in the conduct described in
20 this Complaint, SOSA acted under the course and scope of her employment for CVS. By
21 engaging in at least some of the conduct described in this Complaint, SOSA exceeded the
22 authority vested in her as an employee of CVS and committed acts of a personal nature and/or
23 for personal and financial interest or gain.
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25 13. Upon information and belief and thereon alleged, GINNY McCLURE
26 (hereinafter “GINNY McCLURE,” and/or “McCLURE,” and/or singly addressed as “CVS”
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1 and/or singly addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)” is
2 sued both individually and in her capacity Manager &/or Assistant Manager &/or Supervisor of
3 CVS/PHARMACY # 563, located at 1515 Old Trolley Road, Summerville, South Carolina,
4 during all times relevant to the facts as alleged herein. By engaging in the conduct described in
5 this Complaint, McCLURE acted under the course and scope of her employment for CVS. By
6 engaging in at least some of the conduct described in this Complaint, McCLURE exceeded the
7 authority vested in her as an employee of CVS and committed acts of a personal nature and/or
8 for personal and financial interest or gain.
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10 14. Upon information and belief and thereon alleged, JIM KEELER (hereinafter
11 “JIM KEELER,” and/or “KEELER,” and/or singly addressed as “CVS” and/or singly
12 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)” is sued both
13 individually and in his capacity as Manager &/or Assistant Manager &/or Supervisor of
14 CVS/PHARMACY # 7386, located at 512 South Kings Highway, Myrtle Beach, South
15 Carolina, during all times relevant to the facts as alleged herein. By engaging in the conduct
16 described in this Complaint, KEELER acted under the course and scope of his employment for
17 CVS. By engaging in at least some of the conduct described in this Complaint, KEELER
18 exceeded the authority vested in him as an employee of CVS and committed acts of a personal
19 nature and/or for personal and financial interest or gain.
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21 15. Upon information and belief and thereon alleged, HARRIS CHISHOLM
22 (hereinafter “HARRIS CHISHOLM,” and/or “CHISHOLM,” and/or singly addressed as
23 “CVS” and/or singly addressed as “CVS Defendant(s) and/or singly addressed as
24 “Defendant(s)” is sued both individually and in his capacity as Manager &/or Assistant
25 Manager &/or Supervisor of CVS/PHARMACY # 4114, located at 3700 Two-Notch Road,
26 Columbia, South Carolina, during all times relevant to the facts as alleged herein. By engaging
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1 in the conduct described in this Complaint, CHISHOLM acted under the course and scope of
2 his employment for CVS. By engaging in at least some of the conduct described in this
3 Complaint, CHISHOLM exceeded the authority vested in him as an employee of CVS and
4 committed acts of a personal nature and/or for personal and financial interest or gain.

5 16. Upon information and belief and thereon alleged, ASHLEY GATES (hereinafter
6 “ASHLEY GATES,” and/or “GATES,” and/or singly addressed as “CVS” and/or singly
7 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
8 individually and in her capacity as Manager &/or Assistant Manager &/or Supervisor of
9 CVS/PHARMACY # 7305, located at 65 Sycamore Avenue, Charleston, South Carolina,
10 during all times relevant to the facts as alleged herein. By engaging in the conduct described in
11 this Complaint, GATES acted under the course and scope of her employment for CVS. By
12 engaging in at least some of the conduct described in this Complaint, GATES exceeded the
13 authority vested in her as an employee of CVS and committed acts of a personal nature and/or
14 for personal and financial interest or gain.

15 17. Upon information and belief and thereon alleged, SUSAN WEBB (hereinafter
16 “SUSAN WEBB,” and/or “WEBB,” and/or singly addressed as “CVS” and/or singly addressed
17 as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both individually and
18 in her capacity as Manager &/or Assistant Manager &/or Supervisor of CVS/PHARMACY #
19 7697, located at 415 Brooks Road, Andrews. South Carolina, during all times relevant to the
20 facts as alleged herein. By engaging in the conduct described in this Complaint, WEBB acted
21 under the course and scope of her employment for CVS. By engaging in at least some of the
22 conduct described in this Complaint, WEBB exceeded the authority vested in her as an
23 employee of CVS and committed acts of a personal nature and/or for personal and financial
24 interest or gain.

1 18. Upon information and belief and thereon alleged, JOSEPH CESSNA, *a.k.a.*
2 JOEY CESSNA, (hereinafter “JOSEPH CESSNA,” and/or “CESSNA,” and/or singly
3 addressed as “CVS” and/or singly addressed as “CVS Defendant(s) and/or singly addressed as
4 “Defendant(s)”) is sued both individually and in his capacity as Manager &/or Assistant
5 Manager &/or Supervisor of CVS/PHARMACY # 8492, located at 930 82nd Parkway, Myrtle
6 Beach, South Carolina, during all times relevant to the facts as alleged herein. By engaging in
7 the conduct described in this Complaint, CESSNA acted under the course and scope of his
8 employment for CVS. By engaging in at least some of the conduct described in this
9 Complaint, CESSNA exceeded the authority vested in him as an employee of CVS and
10 committed acts of a personal nature and/or for personal and financial interest or gain.

12 19. Upon information and belief and thereon alleged, TRAVIS COMBS (hereinafter
13 “TRAVIS COMBS,” and/or “COMBS,” and/or singly addressed as “CVS” and/or singly
14 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
15 individually and in his capacity as Manager &/or Assistant Manager &/or Supervisor of the
16 CVS/PHARMACY #7568, once located at 1316 Red Bank Road, Goose Creek, South
17 Carolina, during all times relevant to the facts as alleged herein. By engaging in the conduct
18 described in this Complaint, COMBS acted under the course and scope of his employment for
19 CVS. By engaging in at least some of the conduct described in this Complaint, COMBS
20 exceeded the authority vested in him as an employee of CVS and committed acts of a personal
21 nature and/or for personal and financial interest or gain.

23 20. Upon information and belief and thereon alleged, JOHN BRESCIA (hereinafter
24 “JOHN BRESCIA,” and/or “BRESCIA,” and/or singly addressed as “CVS” and/or singly
25 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
26 individually and in his capacity as Manager &/or Assistant Manager &/or Supervisor of the
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CVS/PHARMACY #7568, once located at 1316 Red Bank Road, Goose Creek, South Carolina, during all times relevant to the facts as alleged herein. By engaging in the conduct described in this Complaint, BRESCIA acted under the course and scope of his employment for CVS. By engaging in at least some of the conduct described in this Complaint, BRESCIA exceeded the authority vested in him as an employee of CVS and committed acts of a personal nature and/or for personal and financial interest or gain.

21. Upon information and belief and thereon alleged, NATASHA PENDERGRASS (hereinafter “NATASHA PENDERGRASS,” and/or “PENDERGRASS,” and/or singly addressed as “CVS” and/or singly addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both individually and in her capacity as Manager &/or Assistant Manager &/or Supervisor of the CVS/PHARMACY # 3199, once located at 1013 Broad River Rd, Columbia, South Carolina, during all times relevant to the facts as alleged herein. By engaging in the conduct described in this Complaint, PENDERGRASS acted under the course and scope of her employment for CVS. By engaging in at least some of the conduct described in this Complaint, PENDERGRASS exceeded the authority vested in her as an employee of CVS and committed acts of a personal nature and/or for personal and financial interest or gain.

22. Upon information and belief and thereon alleged, PAUL ANDERSON (hereinafter “PAUL ANDERSON,” and/or “ANDERSON,” and/or singly addressed as “CVS” and/or singly addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both individually and in his capacity as District Manager for CVS/pharmacy and/or CVS Caremark Corporation and/or South Carolina CVS Pharmacy, LLC, and/or CVS Pharmacy, Inc., for at least one or more of the CVS/pharmacy locations at or through which the relevant allegations occurred, during all times relevant to the facts as alleged herein. By engaging in the conduct described in this Complaint, ANDERSON acted under the course and scope of his

1 employment for CVS. By engaging in at least some of the conduct described in this
2 Complaint, ANDERSON exceeded the authority vested in him as an employee of CVS and
3 committed acts of a personal nature and/or for personal and financial interest or gain.

4 23. Upon information and belief and thereon alleged, KEVIN ELLIOTT (hereinafter
5 “KEVIN ELLIOTT,” and/or “ELLIOTT,” and/or singly addressed as “CVS” and/or singly
6 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
7 individually and in his capacity as District Manager for CVS/pharmacy and/or CVS Caremark
8 Corporation and/or South Carolina CVS Pharmacy, LLC, and/or CVS Pharmacy, Inc., for at
9 least one or more of the CVS/pharmacy locations at or through which the relevant allegations
10 occurred, during all times relevant to the facts as alleged herein. By engaging in the conduct
11 described in this Complaint, ELLIOTT acted under the course and scope of his employment for
12 CVS. By engaging in at least some of the conduct described in this Complaint, ELLIOTT
13 exceeded the authority vested in him as an employee of CVS and committed acts of a personal
14 nature and/or for personal and financial interest or gain.

15 24. Upon information and belief and thereon alleged, JOHN ROBINSON
16 (hereinafter “JOHN ROBINSON,” and/or “ROBINSON,” and/or singly addressed as “CVS”
17 and/or singly addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is
18 sued both individually and in his capacity as District Manager for CVS/pharmacy and/or CVS
19 Caremark Corporation and/or South Carolina CVS Pharmacy, LLC, and/or CVS Pharmacy,
20 Inc., for at least one or more of the CVS/pharmacy locations at or through which the relevant
21 allegations occurred, during all times relevant to the facts as alleged herein. By engaging in the
22 conduct described in this Complaint, ROBINSON acted under the course and scope of his
23 employment for CVS. By engaging in at least some of the conduct described in this
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1 Complaint, ROBINSON exceeded the authority vested in him as an employee of CVS and
2 committed acts of a personal nature and/or for personal and financial interest or gain.

3 25. Upon information and belief and thereon alleged, MATT LESNIAK (hereinafter
4 “MATT LESNIAK,” and/or “LESNIAK,” and/or singly addressed as “CVS” and/or singly
5 addressed as “CVS Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both
6 individually and in his capacity as District Manager for CVS/pharmacy and/or CVS Caremark
7 Corporation and/or South Carolina CVS Pharmacy, LLC, and/or CVS Pharmacy, Inc., for at
8 least one or more of the CVS/pharmacy locations at or through which the relevant allegations
9 occurred, during all times relevant to the facts as alleged herein. By engaging in the conduct
10 described in this Complaint, LESNIAK acted under the course and scope of his employment
11 for CVS. By engaging in at least some of the conduct described in this Complaint, LESNIAK
12 exceeded the authority vested in him as an employee of CVS and committed acts of a personal
13 nature and/or for personal and financial interest or gain.

15 26. Upon information and belief and thereon alleged, JOHN DOE # 1, who Plaintiff
16 believes goes by the name of Josh, (hereinafter “JOHN DOE,” “JOHN DOE # 1 (Josh),” and/or
17 singly addressed as “CVS” and/or singly addressed as “CVS Defendant(s) and/or singly
18 addressed as “Defendant(s)”) is sued both individually and in his capacity as Manager &/or
19 Assistant Manager &/or Supervisor and/or employee of the CVS/PHARMACY # 7159, located
20 at 2884 Highway 17 North, Mount Pleasant, South Carolina, during all times relevant to the
21 facts as alleged herein. By engaging in the conduct described in this Complaint, JOHN DOE #
22 1 (Josh) acted under the course and scope of his employment for CVS. By engaging in at least
23 some of the conduct described in this Complaint, JOHN DOE #1 (Josh) exceeded the authority
24 vested in him as an employee of CVS and committed acts of a personal nature and/or for
25 personal and financial interest or gain.

1 27. Upon information and belief and thereon alleged, JANE DOE # 1, who Plaintiff
2 believes goes by the name of Allison, (hereinafter “JANE DOE,” “JANE DOE # 1
3 (Allison),” and/or singly addressed as “CVS” and/or singly addressed as “CVS Defendant(s)
4 and/or singly addressed as “Defendant(s)”) is sued both individually and in her capacity as
5 Manager &/or Assistant Manager &/or Supervisor of the CVS/PHARMACY # 4399, located at
6 2571 Forest Drive, Columbia, South Carolina, during all times relevant to the facts as alleged
7 herein. By engaging in the conduct described in this Complaint, JANE DOE # 1 (Allison)
8 acted under the course and scope of her employment for CVS. By engaging in at least some of
9 the conduct described in this Complaint, JANE DOE #1 (Allison) exceeded the authority
10 vested in her as an employee of CVS and committed acts of a personal nature and/or for
11 personal and financial interest or gain.
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13 28. Upon information and belief and thereon alleged, JANE DOE # 2, who Plaintiff
14 believes goes by the name of either Tonia or Tonya, (hereinafter “JANE DOE,” “JANE DOE #
15 2 (Tonia or Tonya),” and/or singly addressed as “CVS” and/or singly addressed as “CVS
16 Defendant(s) and/or singly addressed as “Defendant(s)”) is sued both individually and in her
17 capacity as Manager &/or Assistant Manager &/or Supervisor of the CVS/PHARMACY #
18 7697, located at 415 Brooks Road, Andrews, South Carolina, during all times relevant to the
19 facts as alleged herein. By engaging in the conduct described in this Complaint, JANE DOE #
20 2 (Tonia or Tonya) acted under the course and scope of her employment for CVS. By
21 engaging in at least some of the conduct described in this Complaint, JANE DOE #2 (Tonia or
22 Tonya) exceeded the authority vested in her as an employee of CVS and committed acts of a
23 personal nature and/or for personal and financial interest or gain.
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25 29. On information and belief, Defendant CVS CAREMARK CORPORATION
26 and/or SOUTH CAROLINA CVS PHARMACY, LLC, and/or CVS PHARMACY, INC.,
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1 individually and/or jointly, is the parent company of each of the CVS/pharmacy establishments
2 at the South Carolina locations identified herein. On information and belief, all operations and
3 all employees of each of the CVS/pharmacy establishments at the locations identified herein
4 have been controlled, directed, and supervised by either and/or both Defendants CVS
5 CAREMARK CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC,
6 and/or CVS PHARMACY, INC. On information and belief, Defendants CVS CAREMARK
7 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, and/or CVS
8 PHARMACY, INC., have knowledge of and approved of all the conduct of each of the
9 CVS/pharmacy retail establishments at the locations identified herein and its employees, agents
10 and/or representatives.

12 30. On information and belief, each of the CVS/pharmacy establishments at the
13 locations identified herein is a place of public accommodation principally engaged in the retail
14 sale of prescription pharmaceuticals and provision of health care and/or medical- and health-
15 related supplies and/or products.

17 31. On information and belief, each of the CVS/pharmacy establishments at the
18 locations identified herein is, or at all times relevant hereto was, open to, and serves, the public.

19 32. On information and belief, as President of CVS/pharmacy COSBY was
20 responsible for all aspects of the CVS Retail business (CVS/pharmacy), including operations
21 and strategic planning; developed overall corporate strategy and enterprise communications for
22 the company; developed strategies, policies, and procedures for retail operations; set the
23 expectation, standard and example for customer service within all CVS/pharmacy locations;
24 and was responsible for selection, guidance, training, performance management and
25 accountability of all CVS/pharmacy associates

1 33. On information and belief, as Vice President of CVS/pharmacy, PURDY is and
2 was responsible for total profit and loss (P&L), market operations, human resources; corporate-
3 wide pharmacy operations, staffing, quality, and regulatory matters; leadership and oversight of
4 all CVS/pharmacy locations; develops strategies and implements programs that enhance
5 CVS/pharmacy operations and effectiveness, including, but not limited to, process
6 improvements and staff training.

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8 34. On information and belief, TWEDELL's and EDGE's responsibilities as
9 Regional Manager of CVS/pharmacy include: supervision of all District Managers, Pharmacy
10 Supervisors, and HR Managers, along with other support positions as determined by the Area
11 Vice President; utilizing staff from the CVS organization to achieve the region's objectives;
12 setting the standard for customer service within the region; setting the expectations of all
13 programs in order to drive sales and improve the profitability of the region; selecting,
14 promoting, succession planning, separation as needed, of all District Store Manager, Pharmacy
15 Supervisors, and other support positions within the region; exemplifying expected levels of
16 customer service; managing the total store operation of the defined region, including selection,
17 guidance and performance review of staff; and training and developing personnel to ensure a
18 working environment for success.

19
20 35. On information and belief, ANDERSON's, ELLIOTT's, ROBINSON's, and
21 LESNIAK's responsibilities as District Managers of CVS/pharmacy include: managing the
22 total store operations of the district; supporting, training and innovative thinking to successfully
23 lead an average of 20 or more stores; accountability for the operational performance and
24 management of store teams, including people development, sales and sales building programs,
25 service, execution of company-wide programs and initiatives; supervising support staff to drive
26 results in the district; conducting store visits to motivate and energize store personnel; teaching
27

1 store teams how to be successful, how to impact service and ultimately deliver for customers;
2 making adjustments or taking risks to provide a great customer experience that delivers results;
3 had the autonomy to make decisions, from coaching a store colleagues in real-time to coaching
4 Store Managers on effective strategies with the customer in mind; and responsibility for
5 selection, guidance, training, performance management and accountability of all associates in
6 the district (Store Managers, Assistant Managers and Pharmacists), including acclimating new
7 field management staff to the company and or new positions.
8

9 36. On information and belief, POLAND's, SOSA's, McCLURE's, KELLER's,
10 CHISHOLM's, WEBB's, CESSNA's, COMBS', BRESCIA's, GATES' and PENDERGRASS'
11 responsibilities as Store, or Assistant Store, Managers included building consumer loyalty to
12 CVS/pharmacy through a focus on excellent customer service; maintaining an engaged store
13 team through demonstrating initiative and leading by example; operations and management
14 skills training and learning about key aspects of the business and CVS/pharmacy culture; and
15 total leadership and strategic operation of a CVS/pharmacy store including, though not limited
16 to, overall store management, supervision, and policy implementation; sales and inventory
17 management; employee staffing, training, and development; and customer service leadership.
18

19 37. The true names and capacities, whether individual, corporate, associate,
20 governmental, or otherwise, of Defendants JOHN DOES 1 through 80 and JANE DOES 1
21 through 50, are unknown to CALLUM at this time, who therefore Plaintiff sues said DOE
22 Defendants by such fictitious names (hereinafter "JOHN DOE," "JOHN DOES," "JANE
23 DOE," "JANE DOES," and/or singly addressed as "CVS" and/or singly addressed as "CVS
24 Defendant(s) and/or singly addressed as "Defendant(s)"). Plaintiff is informed and believes and
25 thereon alleges that each of the defendants designated as a DOE is responsible in some manner
26 for the events and happenings herein referred to, and that Plaintiff's injuries and damages as
27

hereinafter set forth were proximately caused by said Defendants. When the true names and capacities of said DOE Defendants have been ascertained, CALLUM will amend this Complaint accordingly. CALLUM is informed and believes, and thereon alleges, that each Defendant designated herein as a JOHN DOE or as a JANE DOE is responsible, directly or in concert with others, or negligently or in some other actionable manner, for the events and happenings hereinafter referred to, and caused damages thereby to CALLUM, as hereinafter alleged. For those unidentified JOHN DOES and/or JANE DOES who were employees or agents of CVS, by engaging in the conduct described in this Complaint, those JOHN DOES and/or JANE DOES acted under the course and scope of their employment for CVS. For those unidentified JOHN DOES and/or JANE DOES who were employees or agents of CVS, by engaging in at least some of the conduct described in this Complaint, those JOHN DOES and/or JANE DOES exceeded the authority vested in them as an employee of CVS and committed acts of a personal nature and/or for personal and financial interest or gain.

38. CALLUM is informed and believes, and thereon alleges that at all times herein mentioned, Defendants JOHN DOES 1 through 80, inclusive, and JANE DOES 1 through 50, inclusive, at all times relevant hereto, were and are individuals, corporations, partnerships, unincorporated associations, sole proprietorships and/or other business entities organized and existing under and by virtue of the laws of the State of South Carolina, or the laws of some other state or foreign jurisdiction, and that said Defendants, and each of them, have regularly conducted business in the State of South Carolina or have similarly availed themselves of the laws of the State of South Carolina.

39. Plaintiff is informed and believed and thereon alleges that at all times herein mentioned, each of the Defendants sued herein was the agent and/or partner and/or joint venturer and/or employee of each of the remaining defendants, and each of them were acting

1 within the course and scope of such agency and/or employment during at least some of the
2 events giving rise to Plaintiff's harm as alleged herein. Plaintiff is further informed and
3 believes, and thereon alleges, that each of the Defendants herein gave consent to, ratified,
4 and/or authorized the acts alleged herein to each of the remaining Defendants.

5 **JURISDICTION AND VENUE**

6
7 40. This action arises from a violation, *inter alia*, of Title III of the Americans with
8 Disabilities Act, 42 U.S.C. § 12181, *et seq.*, discrimination in violation of the Civil Rights Act
9 of 1964, 42 U.S.C. §§ 1981, § 1985, 1986 and 42 U.S.C. § 2000d, *et seq.*, and discrimination in
10 violation of the Affordable Care Act, 42 U.S.C. § 18116. Plaintiff also seeks redress of
11 violations of state law rights and/or federal law rights via the supplemental jurisdiction of this
12 Court.

13 41. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 and
14 supplemental jurisdiction under 28 U.S.C. § 1367(a). Declaratory and injunctive relief are
15 authorized by 28 U.S.C. §§ 2201, 2202, and 1343.

16 42. Venue is proper pursuant to 28 U.S.C. § 1391 because at least one of the
17 defendants resides within this District and because all the acts for which Plaintiff complains
18 occurred in several municipalities within the State of South Carolina.

19 43. Personal jurisdiction is proper over each of the defendants because they are
20 either domiciled in the State of South Carolina and/or have regularly transacted business in the
21 State.
22

23 44. In order to maintain an action under 42 U.S.C. § 1985, CALLUM need not first
24 exhaust administrative or state remedies. Neither does the availability of a state remedy
25 preclude CALLUM from seeking relief under the Civil Rights Act, when the Complaint
26
27

1 otherwise states a claim. (*Hazzard v. Weinberger*, 382 F.Supp. 255 (1974), affirmed 512 F.2d
2 1397 (2nd Cir. 1975) or state court remedies (*Burt v. City of New York*, 156 F.2d 791 (1946)).

3 **GENERAL ALLEGATIONS**

4 45. The national tragedy of September 11, 2001, shook this Nation to its core and
5 inspired many patriots to enlist in the United States Armed Forces, which launched Operation
6 Enduring Freedom (originally called Operation Infinite Justice) on or around October 7, 2001.
7 One such patriot is Plaintiff Jimmie CALLUM, Jr., who enlisted in the United States Marine
8 Corps during 2001.

9 46. During the years prior to enlisting in the United States Marine Corps, CALLUM
10 (and/or his family on his behalf during the time he was a minor) regularly shopped at various
11 Defendant CVS/pharmacy locations within the State of South Carolina, which included, *inter*
12 *alia*, receiving and/or purchasing prescription pharmaceuticals and health care-related products
13 and/or services.

14 47. CALLUM's career in the Marine Corps was short-lived. During 2002, due to
15 circumstances which resulted in CALLUM's diagnosis with Post-Traumatic Stress Disorder
16 (PTSD) and other, occasionally severe, symptoms associated with PTSD, including extreme
17 agoraphobia, the Marine Corps discharged CALLUM with a service connected disability.

18 48. A short time after his PTSD diagnosis, CALLUM began to (and still does) wear
19 a sports towel draped over his head (similar to the sports towels used by many National
20 Football League players while on the sidelines – like Carolina Panthers' quarterback Cam
21 Newton, or even basketball player Michael Jordon) as a psychological coping mechanism.
22 CALLUM's doctors consent to CALLUM wearing a sports towel, as it grounds him and helps
23 him maintain a sense of calm.
24
25
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1 49. Despite that initial diagnosis, CALLUM attempted to remain a functioning
2 member of society through at-home employment. Unfortunately, CALLUM's condition
3 insidiously pervaded his life, and by 2010 circumstances required CALLUM to accept
4 Veteran's Administration benefits for service-connected disabilities.

5 50. As a result of the facts as alleged herein, CALLUM has been diagnosed as
6 additionally suffering major depression, severe anxiety, and suicidal ideation, among other
7 symptoms.

8 51. As required by his condition, CALLUM received treatment from various
9 medical and mental health service providers. By 2010, however, CALLUM's doctors insisted
10 he drop plans to remain employed and place all his focus and effort into overcoming PTSD,
11 agoraphobia and other PTSD-related symptoms.

12 52. It was only the beginning of 2012 when doctors felt comfortable to suggest
13 CALLUM venture out to try and gradually regain his place in society. CALLUM's doctors felt
14 that, as a step towards continued improvement, CALLUM begin with small steps and start by
15 requesting modest accommodation. CALLUM's doctors chose this course of treatment at least
16 in part due to the Americans with Disabilities Act (ADA) prohibition against discrimination
17 against those with disabilities and the ADA's guarantees that people with disabilities have the
18 same opportunities as everyone else to participate in the mainstream of American life,
19 including enjoyment of employment opportunities, participation in State and local government
20 programs and services, and purchase goods and services.

21 53. Based upon the suggestion of doctors, and with knowledge of the support
22 provided under and by the ADA, CALLUM agreed to a course of treatment that might slowly,
23 though effectively, help reacquaint him with social interaction and/or improve his social skills.
24 Since ADA § 12181(7)(E) states that grocery stores, clothing stores, hardware stores, shopping
25

1 centers, or other sales or rental establishments are private entities considered public
2 accommodations under the ADA, coupled with the § 12182(a) prohibition that “no individual
3 shall be discriminated against on the basis of disability in the full and equal enjoyment of the
4 goods, services, facilities, privileges, advantages, or accommodations of any place of public
5 accommodation by any person who owns, leases, or operates a place of public
6 accommodation,” CALLUM and his doctors agreed on a plan for CALLUM to request modest
7 accommodation in incremental amounts.
8

9 54. On or around February, 2012, though not a requirement under the ADA,
10 CALLUM’s psychologist wrote a generic letter for CALLUM to use whenever he would
11 request places of public accommodation make reasonable accommodations based on
12 CALLUM’s service-connected disability.

13 55. CALLUM’s disability is such that anxiety and panic attacks overtake and
14 adversely affect him when he encounters multiple unknown persons. CALLUM’s doctors
15 believed that places of public accommodation would allow CALLUM to enter the
16 establishment during typically non-business hours, either shortly before opening the place of
17 public accommodation to others or near the establishment’s closing time. CALLUM’s doctors
18 believed this request to be reasonable based upon CALLUM’s disability because the mere
19 thought that other patrons may enter the establishment could be sufficient circumstance that
20 could adversely affect CALLUM. CALLUM’s knowledge and awareness that no other patrons
21 could come into the place of public accommodation while the entry doors remained locked
22 after CALLUM was inside minimize CALLUM’s anxiety and adverse response to panic and/or
23 excessive stimuli.
24

25 56. On or around February, 2012, CALLUM’s course of treatment began with his
26 request to the South Carolina Department of Motor Vehicles (DMV). CALLUM spoke with
27

1 Branch Manager Mrs. Ivvy for the branch located at 785 Eastland Avenue, Kingstree, South
2 Carolina. CALLUM informed Ivvy that he needed to renew his driver's license and requested
3 reasonable accommodation based on the Veterans Administration's diagnosis of PTSD with
4 accompanying extreme agoraphobia.

5 57. Upon hearing about CALLUM's condition and his request, Ivvy first contacted
6 Mrs. Phelps, DMV Driver Services Director, who contacted CALLUM personally to discuss
7 his accommodation request. The DMV willingly agreed to CALLUM's request, in part
8 because the DMV believed it to be reasonable and not an undue burden. Ivvy assured
9 CALLUM the DMV would be flexible by allowing CALLUM to arrive either before or after
10 normal business hours. Ivvy suggested it would be better for CALLUM to park in the back of
11 the building where employees park because when it was time for CALLUM to leave, the
12 number of customers at the front entrance may cause CALLUM distress. Unknown to
13 CALLUM at the time and outside the scope of his accommodation, prior to CALLUM's arrival
14 Ivvy unilaterally requested all DMV personnel vacate the office so that CALLUM would only
15 interact with Ivvy. CALLUM stayed for about 30 minutes, during which time his application
16 was processed and he received a driver's license.
17

18 58. CALLUM was ecstatic that the DMV treated him like a "normal" person and as
19 if there was absolutely nothing out of the ordinary with his request or how the DMV worked to
20 accommodate his disability. CALLUM's doctors believed CALLUM's DMV experience
21 would serve as a catalyst for working to improve both how CALLUM worked with or through
22 his condition as well as minimize his hostility levels and/or social withdrawal.
23

24 59. Based upon the warm reception provided by the DMV, CALLUM and his
25 doctors agreed that CALLUM should contact a "grocery store, clothing store, hardware store,
26 or other sales or rental establishment" (each considered public accommodations under the
27

1 ADA) that might offer a similar level of experience in response to requests for accommodation.

2 It took CALLUM and his doctors several months of working together to ensure CALLUM
3 was both mentally and emotionally receptive to forge a path to regaining his place in society.

4 60. CALLUM's first contact with a non-government public accommodation was
5 Best Buy, an electronics "superstore," located at 7612 Rivers Avenue, North Charleston, South
6 Carolina. CALLUM chose Best Buy because it was a store he had wanted to shop for some
7 time.

8
9 61. On, around and between August and September, 2013, the Best Buy Store
10 Manager, Jay Hicks, came out of the store and met with CALLUM while CALLUM remained
11 in his vehicle. CALLUM told Hicks that he was a Marine veteran who received a disability
12 diagnosis of PTSD and PTSD-associated agoraphobia, and asked Hicks if, as a reasonable
13 accommodation under the ADA, he could shop after hours due to his disability. Hicks stated
14 that he personally had no problem accommodating CALLUM but wanted to confirm his
15 decision with Corporate. CALLUM does not recall the name of the Corporate person to whom
16 they spoke though believes the man's name was either Brett or Brad. Due to issues of
17 scheduling and availability, CALLUM later contacted a woman named Rhonda, who stated that
18 she would be the one CALLUM needed to work with to coordinate his accommodation request.
19

20 Rhonda not only contacted the North Charleston Best Buy location, but informed managers at
21 other South Carolina Best Buy stores as to CALLUM's request and the need for each store to
22 make reasonable accommodation. Rhonda informed CALLUM that his request to shop after
23 scheduled closing time was reasonable under the circumstances and not what Best Buy would
24 ever consider to be an undue burden on any of their hundreds of stores. Further, Best Buy
25 placed no restriction on the amount of time it would allow CALLUM to shop, though did
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1 request CALLUM provide the specific store with a day's notice to ensure personnel would be
2 available for his accommodation.

3 62. In addition to South Carolina DMV and Best Buy, CALLUM requested and
4 received accommodation at the following public accommodations:

- 5 a. Publix Food & Pharmacy, a grocery store and pharmacy, located at 2800
6 Rosewood Drive, Columbia, South Carolina, whose store manager Jeffery
7 Thompson stated that CALLUM's request was certainly reasonable and that it
8 would not be a problem at all;
9
- 10 b. Publix Food & Pharmacy, a grocery store and pharmacy, located at 1401 Sam
11 Rittenberg Boulevard, Charleston, South Carolina; whose store manager, Steve,
12 assured CALLUM that allowing CALLUM to shop after hours is reasonable and
13 not an undue burden on them and that he absolutely has no problem whatsoever
14 allowing CALLUM that accommodation;
- 15 c. Food Lion, a grocery store, located at 1009 Highway 501, Myrtle Beach, South
16 Carolina, whose store manager Anthony stated he understands the ADA and that
17 CALLUM's request is a reasonable request, but that if Anthony were not working
18 on the night CALLUM needed accommodation, that CALLUM should ask to
19 speak with the assistant manager Tim, and concluded by saying "so, no worries."
20
- 21 d. Delta Pharmacy, a retail pharmacy, with locations at 162 Seven Farms Drive,
22 Daniel Island, and its East Bay Street location in Charleston, both in South
23 Carolina, whose Regional Manager, John Joe clearly understood that CALLUM
24 needed to shop after hours when the store was locked and limited to customers
25 because this could help with CALLUM's exposure therapy, and the East Bay
26

1 Street store manager, Joey, on the day CALLUM requested accommodation stated
2 that they “wanted to work around” CALLUM and what was easiest for CALLUM;

- 3 e. Costco, a club/membership warehouse outlet located at 1021 Oak Forest Lane,
4 Myrtle Beach, South Carolina, whose assistant general manager Andrew stated
5 that he fully understand the ADA, that all Costco employed participate in annual
6 training for it, and that CALLUM’s request absolutely falls within what Costco
7 believes is a reasonable accommodation request;
- 8 f. Sam’s Club, a club/membership warehouse store, located at 4900 Centre Point
9 Drive, North Charleston, South Carolina, whose store manager James stated that
10 he, too, is an ex-Marine and military police, that he understands PTSD, and that he
11 and all South Carolina Sam’s Club managers will do whatever they can to help
12 CALLUM, as neither he nor Sam’s Club view CALLUM’s request as an undue
13 burden and that the request is clearly reasonable;
- 14 g. Family Dollar, a discount retail store, located at 208 North Main Street,
15 Summerville, South Carolina, whose store manager Andre stated that all
16 CALLUM had to do was to contact any employee prior to closing and Family
17 Dollar would grant CALLUM’s request to shop after hours; and
- 18 h. Family Dollar, a discount retail store, located at 4391 Dorchester Road,
19 Charleston, South Carolina, whose store manager Mike stated that Family Dollar
20 will work with CALLUM to accommodate CALLUM’s disability, but suggested
21 that it would probably be better for CALLUM’s disability if CALLUM’s
22 accommodation could occur in the morning at least half an hour before the store
23 opened, as Mike was concerned that the hectic pace of employees after closing
24 time might adversely effect CALLUM.

1 63. CALLUM contacted and/or approached each of the aforementioned public
2 accommodations in the same or similar manner as he did each of the CVS Defendants' stores.

3 64. CALLUM chose CVS for three reasons. First, among the many commercial
4 retail stores in the area, CALLUM chose to patronize CVS because of its reputation as a
5 nationally-advertised large chain drug store and, as such, had the expectation of nationally
6 recognized quality and customer service. Second, since the time of CALLUM's disability
7 diagnosis, CALLUM avoided going to public places/public accommodations and CALLUM's
8 mother had shopped for him on numerous occasions because both CALLUM and his mother
9 appreciate the quality of the goods available through the CVS/pharmacy retail chain. Third,
10 while trying to locate any publicly available policy published by the CVS Defendants,
11 CALLUM read CVS CAREMARK CORPORATION's 2012 annual report in which store
12 management stated "Helping people on their path to better health," and elsewhere "(w)e are
13 focused on enhancing access to care . . . and improving health outcomes." CALLUM believed
14 the tenor of those messages at least implied that CVS/pharmacy retail community pharmacies
15 would accommodate a request that many other public accommodations, both government and
16 private, agreed were both reasonable and not an undue burden.
17
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19 65. On or around August 27, 2013, CALLUM contacted CVS/pharmacy # 7159 and
20 spoke with Defendant BILL POLAND, who identified himself as the store manager.
21 CALLUM described and explained his disability and the reason he needed a special but yet
22 reasonable accommodation. Though not required under the ADA, CALLUM offered to show
23 proof of his disability diagnosis along with a letter written by CALLUM's doctor which further
24 explained why CALLUM needed reasonable accommodation. POLAND stated it was against
25 CVS/pharmacy policy to make accommodations for anyone to shop after hours. CALLUM
26 requested POLAND allow CALLUM to walk up to the door when CALLUM saw staff coming
27

1 to lock it at closing time. Again, POLAND denied CALLUM an accommodation. CALLUM
2 continued, asking POLAND if POLAND and CVS could work with CALLUM to somehow to
3 allow CALLUM to shop during open hours without triggering panic or other PTSD and/or
4 PTSD-associated agoraphobia symptoms due to store being open for other, potentially
5 numerous, customers. POLAND stated that he could not and would not make any guarantees to
6 CALLUM which would interfere with the shopping experience of any other customer.
7 CALLUM persisted, asking POLAND if there was a way either CVS or POLAND would work
8 with CALLUM to provide him reasonable accommodation, such as by letting CALLUM come
9 in at a time when only a few customers were inside while POLAND or another staff member
10 kept an eye out on the door entry to inform CALLUM if or when too many additional
11 customers came into the store so that CALLUM could rely on store personnel to divert
12 customers to a portion of the store while allowing CALLUM time to exit and escape the
13 situation of being around too many customers. POLAND became agitated and stated that their
14 customers should not have to delay their shopping because of CALLUM, and thereafter refused
15 CALLUM any form of accommodation.
16

17 66. On or around August 28, 2013, CALLUM again contacted CVS/pharmacy
18 #7159 in order to speak with a manager other than POLAND. CALLUM spoke with
19 Defendant JOHN DOE # 1, a man who identified himself as Josh. CALLUM explained to
20 JOHN DOE # 1 (Josh) that CALLUM was disabled due to diagnosis with PTSD and PTSD-
21 associated agoraphobia and requested reasonable accommodation to shop for a short time after
22 or before normal store hours. JOHN DOE # 1 (Josh) stated it was against CVS policies to let
23 customers shop after closing time and that all staff members are out of the store immediately at
24 closing time. CALLUM asked JOHN DOE # 1 (Josh) if there was anything he or CVS could
25 do to help or work with CALLUM, but JOHN DOE # 1 (Josh) giggled and initially said “no,”
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27

1 but then went on to inform CALLUM that JOHN DOE # 1 (Josh) was informed by Josh's store
2 manager, POLAND, to deny CALLUM any accommodation, and that JOHN DOE # 1 (Josh)
3 "had to follow (POLAND's) orders." JOHN DOE # 1 (Josh) went on to say, "We're suppose to
4 tell people that all staff members exit the store at the same time exactly at closing time, so I'm
5 sticking with that" and concluded, "so despite your disability, our store can't help you."
6 CALLUM began to further question JOHN DOE # 1 (Josh) about other possible reasonable
7 accommodation, but JOHN DOE # 1 (Josh) ignored CALLUM. CALLUM has since obtained
8 video evidence that contradicts the claims made by JOHN DOE # 1 (Josh) – and other CVS
9 Defendants – as the videos show both customers continuing to shop after store hours and
10 managers present in the stores for over 20 minutes after closing time.
11

12 67. On or around August 28, 2013, CALLUM contacted CVS/pharmacy # 7568,
13 located at 1316 Red Bank Road, Goose Creek, South Carolina (a location that has since
14 closed), and spoke with Defendant TRAVIS COMBS, who identified himself as the store
15 manager. CALLUM informed COMBS that CALLUM was a Marine veteran diagnosed with
16 PTSD and PTSD-associated agoraphobia and that CALLUM's disability prevented CALLUM
17 from shopping during times when numbers, or the possibility of numbers, of other customers
18 might be present. COMBS stated that CALLUM's request was unusual and that it would be
19 unlikely CALLUM could be accommodated, whether at COMBS' or any CVS location.
20 CALLUM stated that CALLUM not only wanted to shop but that CALLUM also wanted to use
21 CVS to start filling CALLUM's prescriptions again and that CALLUM needed a special and
22 reasonable accommodation in order for CALLUM to pick it up. COMBS again said "I can't
23 help, as the store has no drive thru." COMBS further claimed that CVS policy prevents all
24 CVS/pharmacy locations from remaining open after closing time, citing loss prevention and
25 safety concerns for the employees if COMBS were to even let one person shop after hours.
26
27

1 COMBS stated that other people will be allowed to come through the door if CVS were to
2 allow CALLUM to shop after hours. CALLUM asked if COMBS could lock the door after
3 letting CALLUM in to shop, to which COMBS replied that he would “never do that.”

4 68. On or around August 29, 2013, CALLUM voiced a complaint, via an 800
5 telephone number, to a CVS Customer Care representative by the name of Abby. CALLUM
6 explained his disability as PTSD with PTSD-associated agoraphobia, a condition that prevents
7 CALLUM from being around too many people. CALLUM asked Abby if CVS policy would
8 allow CVS/pharmacy locations in South Carolina to provide him the reasonable
9 accommodation of allowing him to shop for ten minutes or so after the store closes and after
10 the front doors are locked, thus barring other customers from entering. Abby stated that
11 CALLUM needed to contact each store manager. CALLUM informed Abby that he had
12 contacted a few store managers who had denied him reasonable accommodation. Abby
13 emphatically stated that each store manager has that authority to give CALLUM permission to
14 shop after hours and, therefore, CALLUM would need to talk with the store manager.
15 CALLUM thanked Abby for her time and information.

16 69. Based upon the information received from Abby/CVS Customer Care, and in
17 consultation with his doctor, CALLUM resumed his efforts to obtain reasonable
18 accommodation from a South Carolina-based CVS/pharmacy.

19 70. On or around September 4, 2013, CALLUM contacted CVS/pharmacy #563 and
20 spoke to Defendant GINNY McCLURE, who identified herself as the store manager.
21 CALLUM explained his disability and made a request for accommodation but McCLURE
22 refused, initially citing “safety reasons.” Although CALLUM explained his disability,
23 McCLURE rudely stated that “CVS is open from 8 in the morning until 10 at night and that
24 gives people plenty of time to shop.” CALLUM further explained that unless McCLURE can
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1 assure CALLUM that a crowd of people would not surround or be near CALLUM during open
2 hours, CALLUM's disability would cause him to become panicky and dizzy due to the mere
3 feeling of vulnerability that a crowd of people may surround CALLUM at any given moment.
4 CALLUM explained that if the doors were at least locked there would be little to no chance of
5 that occurring. McClURE stated that neither she nor CVS would provide CALLUM with
6 assurance of anything and refused CALLUM any form of reasonable accommodation.
7

8 71. On or around September 4, 2013, CALLUM contacted CVS/pharmacy #7305
9 and spoke to ASHLEY GATES, who identified herself as the store manager. CALLUM
10 explained his disability and requested reasonable accommodation to allow CALLUM to shop
11 in Store # 7305, to include allowing CALLUM to obtain prescriptions CALLUM needed CVS
12 to start filling for CALLUM. GATES stated that, citing "safety reasons," GATES would not be
13 able to accommodate CALLUM. CALLUM attempted to show GATES proof of CALLUM's
14 disability via medical documents and reiterated that CALLUM did not and would not do
15 anything to put the safety of CVS personnel or customers in jeopardy. GATES stated that
16 GATES "doesn't know that because (CALLUM) could tell (her) anything." CALLUM asked
17 whether there was anything GATES or CVS/pharmacy could do to help him, to which GATES
18 replied that GATES was "sorry, but I can't help."
19

20 72. CALLUM believed that it may have been possible GATES was not properly
21 trained or otherwise was ignorant of accommodation laws, so on or around September 4, 2013,
22 CALLUM again contacted CVS/pharmacy #563 and this time spoke with Defendant XIO
23 SOSA, who identified herself as the manager. CALLUM explained his disability and again
24 requested reasonable accommodation. SOSA stated that she cannot and will not help
25 CALLUM, and added "plus they are not going to pay me to stay here after 10 o'clock". SOSA
26 then questioned CALLUM, asking "are you the same black guy that contacted us before?"
27

1 CALLUM responded affirmatively, but stated that he had not ever spoken to SOSA before.
2 SOSA replied that she will not accommodate CALLUM because “I don’t trust you and your
3 request seems suspicious.” CALLUM asked “why would you say that’s suspicious right after
4 asking if I was black?” SOSA failed to respond. CALLUM then stated, “after all I have been
5 through, serving this country for you and developing my disability because I served for you,
6 you treat me this way, as though I’m a threat?” SOSA stated that she was sorry but that no one
7 with CVS will help CALLUM achieve reasonable accommodation.
8

9 73. CALLUM thought that there may be some type of misunderstanding on the part
10 of CVS personnel when he made requests via telephone rather than in person and so, on or
11 around September 5, 2013, CALLUM, accompanied by an acquaintance, went to
12 CVS/pharmacy #7697. The acquaintance and CALLUM met with JANE DOE # 1, a woman
13 who identified herself as Tonia (or Tonya), stating that she is a shift supervisor. CALLUM’s
14 acquaintance explained to JANE DOE # 1 (Tonia or Tonya) that CALLUM had a disability
15 recognized under the ADA and asked that CVS and/or JANE DOE # 1 (Tonia or Tonya)
16 accommodate CALLUM as required under the ADA by modifying policy to allow him to shop
17 and pick up prescriptions that CALLUM needed to have filled. JANE DOE # 1 (Tonia or
18 Tonya) stated that she cannot accommodate CALLUM because of CVS policies. CALLUM
19 and his acquaintance later spoke with the store manager Defendant SUSAN WEBB, who stated
20 no CVS will accommodate CALLUM’s request. When asked why, WEBB had no reply.
21

22 74. On or around September 5, 2013, CALLUM contacted CVS/pharmacy # 8492
23 and spoke with Defendant JOE CESSNA, who identified himself as the manager. CALLUM
24 explained his disability and made a reasonable accommodation request, to which CESSNA
25 stated that when the door closes and locks, the alarm goes on and CESSNA is not to allow
26 CALLUM to shop after hours. CALLUM informed CESSNA that CESSNA is allowed to
27

1 accommodate CALLUM because CESSNA is the manager and that other, non-CVS stores
2 have provided CALLUM the accommodation CALLUM requests. CESSNA retorted, "Why do
3 so many blacks think they are entitled to special treatment so often?" CALLUM responded that
4 CESSNA should not make this an issue about CALLUM's African-American heritage.
5 CALLUM continued, "Yeah, I'm black, but I'm also a disabled veteran and I was just trying to
6 find a CVS store to show some compassion towards me by helping me out a little and working
7 with me because of my disability." CESSNA then stated that CESSNA cannot help CALLUM.
8

9 75. Despite his shock at CESSNA's statements, CALLUM had difficulty believing
10 any store manager would actually make blatantly racist statements and so, on or around
11 September 5, 2013, CALLUM contacted CVS/pharmacy #7386 and spoke with Defendant JIM
12 KEELER, who identified himself as the manager. CALLUM explained his disability and made
13 a request for reasonable accommodation. While laughing, KEELER stated, "I am not allowed
14 to break CVS policies because of your PTSD, regardless if you're a Marine or not, and our
15 whole district and other districts know some black guy wearing a towel was trying to get a
16 special accommodation but none of them are going to help you" and "you should choose a
17 different chain store." CALLUM informed KEELER that it was very hurtful and humiliating
18 that the whole district was talking about CALLUM and that CALLUM was seeking reasonable
19 accommodation only to "try to feel normal like other customers." CALLUM informed
20 KEELER that CVS allows managers such as KEELER to grant CALLUM's accommodation
21 request because it's the law, CALLUM is disabled and CVS store personnel are supposed to
22 comply with the law and help people like CALLUM. CALLUM further informed KEELER
23 that CALLUM had witnessed or otherwise has evidence of other customers shopping for up to
24 20 minutes after hours. KEELER then became agitated and started talking loud and in an
25 aggressive manner, saying KEELER will not grant CALLUM's accommodation request
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1 because it's against all CVS policies. CALLUM countered by informing KEELER that in his
2 position as manager KEELER has authority to grant CALLUM's reasonable accommodation
3 request. KEELER then admitted the existence of a conspiracy to discriminate against
4 CALLUM, stating that "our whole district and other districts know about (CALLUM's)
5 accommodation request" and went on to state: "listen here, nigger, you don't know what
6 authorities I have. You should focus on overcoming your condition and come in the store
7 during business hours once your condition gets better and allows you to do that." Despite
8 feeling offended and intimidated, CALLUM informed KEELER that CALLUM's doctors
9 prescribed exposure therapy as a way for CALLUM to get better and that, hopefully, stores that
10 provide him reasonable accommodation will eventually lead to CALLUM's being able to come
11 during regular business hours around many other customers. KEELER then yelled, "I'd advice
12 you to take your black ass on your way because I'm about to call the police and the police are
13 going to make you be around a lot of people."

14
15 76. At the time of CESSNA's and KEELER's statements, CALLUM was unsure
16 whether his early-September experiences with the managers CESSNA and KEELER were due
17 to ignorance of the law or, based on the language used, geography and/or as grounded in
18 possible race-based discrimination. These occurrences helped CALLUM later recall anecdotal
19 information about some Myrtle Beach-based stores/public accommodations shutting down
20 during "Black Biker Week" so as to avoid serving black bikers/attendees. As he discussed the
21 prior events with his health care providers, multiple doctors told CALLUM that CALLUM
22 must put himself through occasionally difficult situations, including those that may be
23 extremely stressful, in order to overcome his condition. After consulting with his doctor,
24 CALLUM thought it best to only make his accommodation requests to managers of
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1 CVS/pharmacy locations outside the greater Myrtle Beach area and who were either female or
2 for whom CALLUM could confirm as non-white males.

3 77. On, around or between mid-September to mid-October, 2013, CALLUM
4 contacted CVS/pharmacy #4399 and spoke to JANE DOE # 2, a woman who called herself
5 Allison and who stated she is the store manager. While CALLUM is unable to specifically
6 recall the exact date due to what happened later (as described below), CALLUM specifically
7 does recall that CALLUM explained his disability to JANE DOE # 2 (Allison) and requested
8 reasonable accommodation under and according to the ADA. JANE DOE # 2 (Allison) said,
9 “because of the area the store is in, I won’t accommodate you.” JANE DOE # 2 (Allison) went
10 on to state that it is not a safe area and they lock the doors at 9 pm. CALLUM told JANE DOE
11 # 2 (Allison) that he could be at the door just before she locks it, but JANE DOE # 2 (Allison)
12 cited CVS policies as prohibiting any customer from remaining in the store past this store’s 9
13 pm closing time.
14

15 78. Shortly thereafter, CALLUM contacted CVS/pharmacy #4114 and spoke with
16 Defendant HARRIS CHISHOLM, who identified himself as the store manager. CALLUM
17 explained his disability and made a request for reasonable accommodation. CHISHOLM stated
18 that because of safety reasons, CVS will not allow CALLUM to shop after closing time.
19

20 79. Around that same time, and based on his doctor’s suggestion that exposure
21 therapy would assist his recovery, CALLUM attempted to obtain reasonable accommodation
22 from a CVS/pharmacy by making an in-person request of a manager who CALLUM perceived
23 might not be so hostile to CALLUM’s request. CALLUM drove to CVS/pharmacy #3199,
24 located at 1013 Broad River Road, Columbia, South Carolina (a location that has since closed).
25 CALLUM first asked a pedestrian/customer walking towards CVS if that person would ask the
26 manager in that CVS/pharmacy to come outside, citing CALLUM’s disability and need for a
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1 manager's assistance. CALLUM then spoke directly with Defendant NATASHA
2 PENDERGRASS, who identified herself as the store manager when she came out of the store
3 and met CALLUM at CALLUM's vehicle.

4 80. CALLUM explained his disability and offered PENDERGRASS medical
5 documents as proof of CALLUM's disability. CALLUM requested an accommodation to shop
6 after hours for about 10 minutes or so while there are only a few last minute shoppers in the
7 store. CALLUM explained his accommodation request in detail, explaining certain logistical
8 aspects that would be most suitable for his disability. PENDERGRASS asked what CALLUM
9 would do when there might have been too many last minute shoppers for CALLUM's comfort
10 level. CALLUM explained that either he would not enter the store or, if he had entered, would
11 have to leave and reschedule the accommodation for another time. PENDERGRASS stated that
12 neither she nor anyone with CVS could help CALLUM with his request, citing "CVS policy."
13 When informed by CALLUM that CVS Corporate informed CALLUM that store managers
14 have the authority to let CALLUM shop after hours, PENDERGRASS stated that while she
15 may have the authority, she does not feel comfortable or safe allowing CALLUM to shop with
16 a sports towel on CALLUM's head, but especially not after hours with the doors locked.
17 CALLUM told PENDERGRASS that he would never do anything to make PENDERGRASS
18 or any CVS employee or customer feel unsafe. CALLUM went on to explain the difficulties
19 he has encountered in his life since the diagnosis of PTSD and PTSD-associated agoraphobia.
20 CALLUM offered examples, such as watching classmates get married, raise families and
21 participate in numerous fun activities while CALLUM feels left behind. CALLUM further
22 explained to PENDERGRASS how hard living in confinement has been, but that now he and
23 his doctors hope emersion therapy offers CALLUM a chance to at least attempt to get out in a
24 more public way, which may help him to feel more normal. CALLUM then expressed his
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1 frustration with the fact that it appeared nobody with CVS was willing to help him, and that he
2 felt as though anyone affiliated with CVS just simply did not care whether they complied with
3 the law or not.

4 81. PENDERGRASS then began questioning CALLUM's disability.
5 PENDERGRASS stated that she never saw or knew of "anybody who couldn't go in a store
6 because they are scared to be around people." PENDERGRASS asked, "Why does that scare
7 you? People won't attack you." CALLUM stated that while it may be difficult for
8 PENDERGRASS to understand, PTSD is a recognized disability under the ADA and went on
9 cite an example, where if a group of people surround CALLUM, CALLUM would become
10 panicky and dizzy. PENDERGRASS then referenced and reached for the sports towel
11 CALLUM always wears, and asked, "What's up with the towel? It's kinda scaring me."
12 CALLUM jumped back, at first apologized though immediately followed that he thought
13 PENDERGRASS' comment was hurtful to him, and then proceeded to explain why and how
14 he wears the sports towel with full knowledge and consent of his doctors. PENDERGRASS
15 expressed skepticism and stated that she did not believe CALLUM, asking "How can that help
16 with PTSD?" PENDERGRASS again reached for the sports towel, as if to remove it from
17 CALLUM's head, and stated, "You expect me to let some muscled black guy with a hand
18 towel on his head to shop here after hours?"
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20 82. PENDERGRASS then stated "toughen up, boy, you have all those big muscles"
21 and grabbed CALLUM by the shoulder and shook him. Then PENDERGRASS challenged
22 CALLUM by saying, "Let's see how you handle this." PENDERGRASS called over to a
23 group of at least four, though possibly more, persons as those persons approached the
24 CVS/pharmacy. PENDERGRASS asked those persons to come to PENDERGRASS outside
25 CALLUM's vehicle. CALLUM begged PENDERGRASS not to engage those persons,
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1 informing PENDERGRASS that it was very likely CALLUM will suffer an anxiety attack, or
2 worse, due to PTSD, and that he is embarrassed by his reactions to crowds. PENDERGRASS
3 said, "Listen here, boy, you need to toughen up. Why are you so nervous?" In an attempt to
4 stop PENDERGRASS engaging the other persons to congregate around CALLUM, CALLUM
5 said "I don't think your boss would like what you're doing." PENDERGRASS replied, "Well,
6 our district manager already knows about your contact with other stores and we already
7 discussed what I was going to do if you came to my store." CALLUM again pleaded with
8 PENDERGRASS to not engage the group of people in congregating around CALLUM.
9 PENDERGRASS ignored CALLUM's pleas and again requested the group of people meet her
10 at CALLUM's vehicle. CALLUM and PENDERGRASS were both standing outside
11 CALLUM's vehicle at the time. As the group of people responded to PENDERGRASS'
12 request to approach CALLUM, CALLUM quickly tried to get inside his vehicle and leave.
13 PENDERGRASS, however, stood on the inside of the driver's side door, thereby preventing
14 CALLUM from closing it and leaving. CALLUM began to suffer a severe panic attack, but
15 also felt extremely humiliated. PENDERGRASS disclosed CALLUM's medical condition to
16 the group and explained why she called them over. CALLUM recalls PENDERGRASS stating
17 "nigga wants to shop . . ." but is unable to recall the complete statements PENDERGRASS told
18 the group of people. CALLUM does recall that everyone in the group appeared to be smiling
19 and laughing, though one stated "I won't hurt you," to CALLUM in a manner which CALLUM
20 believed to be snide and devoid of sincerity. After some time, another of the persons appeared
21 to realize the gravity of the situation, expressed what CALLUM hoped was empathy, and stated
22 that the group of persons should leave CALLUM alone because "he appears to be pretty shaken
23 up." It was only then when PENDERGRASS retreated from her position inside CALLUM's
24 car door, thereby allowing CALLUM to close the door and drive off.
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1 83. Shortly thereafter, outraged by the treatment received by South Carolina-based
2 CVS personnel, CALLUM lodged a complaint with the only national/nationwide contact for
3 CVS, the 800-number for CVS Customer Relations. CALLUM made several demands to speak
4 with various persons in positions of upper management, but each and every time his request
5 was met with the same response: “this is the highest level you can speak with.” Exacerbated by
6 the difficulty involved in attempting to escalate a complaint, CALLUM then proceeded to
7 explain to the CVS Customer Relations representative the treatment he received by CVS
8 personnel, as alleged above. The agent/Customer Relations representative apologized then
9 stated that CVS has a non-discrimination policy and that “CVS does all we can for customers
10 to have the best experience possible with” CVS stores. The agent/Customer Relations
11 representative then offered CALLUM a \$25 gift card, which CALLUM stated was an insult
12 and not at all an indication that the agent/Customer Relations representative understood the
13 facts or the nature of CALLUM’s complaint. The agent/Customer Relations representative
14 asked for CALLUM’s contact information, including email address, and informed CALLUM
15 that a “team” of persons will review CALLUM’s complaint and contact CALLUM soon. As of
16 the date of this Complaint, CALLUM has not received any such contact.
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19 84. After relaying the facts of September and October, 2013, to his doctors, the
20 doctor advised CALLUM to suspend further attempts at exposure therapy until CALLUM at
21 least somewhat recovers from his additional symptoms that began around the time of the
22 incidents as alleged herein.

23 85. For some time after the incident with PENDERGRASS, and continuing to this
24 day, CALLUM felt a multitude of feelings, ranging from humility to anger, and increased
25 traumatic stress manifesting in or as flashbacks of these experiences that have since contributed
26 to anger outbursts. The experiences CALLUM suffered at the hands of the CVS Defendants,
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1 their agents, employees, or others affiliated or associated with the aforementioned CVS-based
2 incidents are directly responsible for major setbacks to CALLUM's progress with managing
3 PTSD and PTSD-associated agoraphobia. The traumatic stress, flashbacks and depression
4 CALLUM has suffered and continues to suffer since these incidents cause CALLUM to
5 experience tension headaches, insomnia, panic attacks, and nervousness, nausea and dizziness,
6 as well as anger outbursts that resulted in physical injury to CALLUM's back and shoulder.
7 Since the time of and as a result of the aforementioned incidents, CALLUM has been
8 prescribed strong opioids, prazosin, sertraline and other pharmaceuticals. CALLUM is
9 prevented, however, from obtaining those pharmaceuticals from any South Carolina-based
10 CVS due to its refusal to reasonably accommodate CALLUM.
11

12 86. A white female friend of CALLUM's, outraged by the treatment CALLUM
13 suffered at the hands of the Defendants, decided to help CALLUM by testing the veracity of
14 the CVS claims – and those its agents, employees, personnel, or others affiliated or associated
15 with CVS – regarding inability to make reasonable accommodation.
16

17 87. On or around October 16, 2013, CALLUM's white female friend contacted
18 CVS/pharmacy #7305 and spoke to the store manager ASHLEY GATES. CALLUM's white
19 female friend did not mention she was a Marine Veteran or had PTSD, but instead informed
20 GATES that she (CALLUM's friend) had been diagnosed with agoraphobia, has anxiety issues,
21 and that her boyfriend usually does her shopping, but that the boyfriend was out of town.
22 CALLUM's white female friend further informed GATES that she (CALLUM's friend) finds it
23 difficult to shop in stores because of her anxiety. CALLUM's white female friend requested
24 accommodation, specifically asking if she would be allowed to shop for about 15 minutes after
25 hours so she could do some shopping until her boyfriend got back. GATES allowed
26 CALLUM's white female friend to enter the store after it was closed and locked.
27

1 88. On or around October 17, 2013, CALLUM's white female friend called the
2 CVS/pharmacy located at 1013 Broad River Road, Columbia, South Carolina and spoke with
3 NATASHA PENDERGRASS, who again identified herself as the store manager. Before
4 CALLUM's friend made an accommodation request, she asked PENDERGRASS whether the
5 store ever allowed customers inside as the store closed and to continue with their shopping
6 even though the doors were locked. PENDERGRASS answered in the affirmative. CALLUM's
7 white female friend then informed PENDERGRASS that she (CALLUM's friend) had a severe
8 case of anxiety and agoraphobia and that if there are only a few customers in the store she
9 would be able to shop but with the store being unlocked she would have too much anxiety
10 because of the mental condition she's being treated for. CALLUM's friend then asked
11 PENDERGRASS whether PENDERGRASS would consider it reasonable for CALLUM's
12 white female friend to shop for ten to thirty minutes after hours, stating that she (CALLUM's
13 friend) would come to the door just as a manager was about to lock the door. CALLUM's
14 friend went on to explain that the person who does her shopping for her was out of town.
15 PENDERGRASS stated, "Yes, you sound like a sweet girl so, yes, that's not a problem; we will
16 gladly accommodate you. Just call before you come so that I could inform other staff
17 members, and be here right at closing time."

18
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20 89. On or around October 17, 2013, CALLUM's white female friend called
21 CVS/pharmacy #563, and spoke to XIO SOSA, who identified herself as the store manager.
22 CALLUM's friend stated, "I may have spoken to another employee but I'm the white girl that
23 called earlier to ask what time you all closed. I wanted to ask though, when your store closes, a
24 lot of times there are last minute shoppers that are allowed to stay inside with the doors locked
25 once the store is closed to do last minute shopping, right?" SOSA replied in the affirmative.
26 CALLUM's white female friend then informed SOSA that she (CALLUM's friend) suffered
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1 from the same or similar condition as explained to SOSA by CALLUM. CALLUM's white
2 female friend asked SOSA if she and/or CVS would be willing to accommodate her by
3 allowing her (CALLUM's friend) to arrive at the store at closing time to allow her to shop with
4 few to no other customers once the store was closed and the doors locked. CALLUM's friend
5 stated that she had seen some customers shopping for at least fifteen minutes after store hours,
6 and that therefore CALLUM's friend felt the accommodation request was reasonable because it
7 would cause no additional burden. SOSA told CALLUM's friend that the accommodation
8 request "was fine" and asked CALLUM's friend to call the store at which she intended to shop
9 earlier in the day to let the manager on duty know. SOSA further stated that if SOSA was not
10 working on the day CALLUM's friend decided to shop, any other manager who was closing
11 would also not have a problem assisting CALLUM's friend with that accommodation.
12

13 90. On or around October 17, 2013, CALLUM's white female friend called
14 CVS/pharmacy #7386 and spoke to JIM KEELER, who again identified himself as the store
15 manager. CALLUM's friend began the call by saying, "I may have spoken to another employee
16 but I'm the white girl that called earlier to ask what time you closed." CALLUM's friend had
17 not called earlier but wanted to make certain that KEELER knew he was speaking with a white
18 female. CALLUM's friend stated that she was diagnosed with agoraphobia, that she needed
19 special accommodation arranged because of her condition, that she needed some help from a
20 few stores in the area because of her medical condition, and wondered whether CVS would be
21 able to accommodate her. KEELER asked CALLUM's friend about the type of
22 accommodation she needed. CALLUM's friend stated that she was open to suggestions but
23 with the severity of her anxiety and panic attacks, there probably were not many suggestions
24 that would be helpful to her. KEELER then said, "Well what do you believe is something we
25 could do for you to help you shop that would cause the least amount of anxiety for you?"
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1 CALLUM's friend replied, "If there's a way for me to shop with only a few customers inside
2 while you prevented lots of others customers from coming in, I could manage to shop."
3 KEELER then replied, "We do have slow times with only a few customers inside but we can't
4 stop other customers from coming in during open hours if they wanted to come in." KEELER
5 then proposed an alternative, stating that "the only option I can think of is for you to come in
6 right before the store is closed and I'll allow you to shop after the store is closed and locked,
7 because the majority of the time there are no more than a few shoppers doing last minute
8 shopping after hours." CALLUM's friend then asked if there was any way KEELER could
9 allow her to enter the store after it was closed. KEELER stated that as long as CALLUM's
10 friend arrived no more than a minute or two after they closed, KEELER would let her in to
11 shop for up to fifteen minutes. CALLUM's friend thanked KEELER for his willingness to
12 accommodate her and stated that she would call before she came to the store.
13

14 91. On or around April 9, 2014, CALLUM sent a letter to Thomas M. Moriarty,
15 General Counsel, CVS CAREMARK CORPORATION and BILL POLAND, Manager of
16 CVS/PHARMACY # 7159, in which he discussed his request for accommodation, the repeat
17 denials of accommodation by CVS personnel and/or agents, the actions of some of the named
18 Defendants, an interest in reaching mutual settlement, and a reminder of the adverse publicity
19 CALLUM's filing this case may cause to or for CVS.
20

21 92. On or around April 30, 2014, CALLUM received a response from CVS in the
22 form of a letter presumably written and signed by Defendant JOHN ROBINSON, who therein
23 identifies himself as a District Manager. In that letter, ROBINSON states, *inter alia*, that CVS
24 "managers and staff receive regularly mandatory training on ADA and accessibility issues,"
25 and that CALLUM's request that the store remain open so that CALLUM can shop without
26 other customers present "is not a necessary or reasonable accommodation, would impose an
27

1 undue hardship on employees, and is a fundamental alteration of the goods and services CVS
2 provides.”

3 93. ROBINSON’s letter was sent approximately six (6) months after four (4) CVS
4 **stores**, with no hesitation or concerns that the accommodation request was unreasonable or an
5 undue burden or as a fundamental alteration of CVS’ goods and services, **willingly**
6 **accommodated a white woman who offered no medical proof of disability** and who had not
7 served in any branch of the United States Military.

8 94. CALLUM avers ROBINSON’s statements are insincere and without merit, and
9 the only reason CVS denied CALLUM’s accommodation requests were due to disability, race
10 and gender discrimination.

11 95. Within approximately two weeks of having received ROBINSON’s letter, on or
12 around May 19, 2014, in a scene reminiscent of the film “Mississippi Burning,” while
13 CALLUM was driving not far from his home a gray truck with flashing headlights pulled up
14 behind CALLUM’s vehicle, then passed CALLUM’s vehicle as the driver, a white male who
15 CALLUM believes to be approximately 40 years of age, frantically pointed to the rear of
16 CALLUM’s vehicle. CALLUM thought something may have been wrong with the vehicle, so
17 CALLUM moved his vehicle off the roadway. The gray truck in pursuit of CALLUM
18 maneuvered into a position behind CALLUM’s vehicle. The driver of the gray truck got out of
19 the gray truck and approached the driver’s side of CALLUM’s vehicle and, once at the driver’s
20 side door, asked CALLUM if he was “Jimmie.” CALLUM replied affirmatively, to which the
21 white male driver of the gray truck stated, “Let me tell you something. I will hurt you so bad if
22 you file a lawsuit against my friend. You wanna act like a pussy, I’ll treat you like a pussy.”
23 CALLUM was dumbfounded, but asked, “What are you talking about?” The white male driver
24 of the gray truck stated, “You know what the fuck I’m talking about. The manager you made a
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1 complaint about last month.” CALLUM was scared, but stated that the white male must be
2 talking about a “different Jimmie.” The white male driver of the gray truck then yelled, “Don’t
3 play dumb!” and reached out and with his one hand stroked CALLUM’s face, then followed
4 with, “what kind of pussy Marine are you?” CALLUM naturally felt threatened and
5 intimidated, so CALLUM put his vehicle in gear and sped away. As CALLUM was leaving,
6 the white male driver of the gray truck repeatedly yelled, stating that “I promise you will get
7 hurt if you file a lawsuit,” among other statements for which CALLUM was unable to
8 determine the actual wording (emphasis added in indicate volume).

10 96. On or around May 19, 2014, CALLUM filed a police report in which he
11 described the events mentioned in paragraph 91, above. In the police report, CALLUM
12 described the truck as either a Ford F-150 or a Chevrolet Silverado. CALLUM also described
13 the white male as approximately 6 feet in height, weighing perhaps 230 pounds.

14 97. CALLUM names the male who accosted and intimidated him, with the intention
15 of preventing him from filing this lawsuit and vindicating CALLUM’s civil rights, as one of
16 the JOHN DOE defendants.

18 98. On information and belief and upon thereon CALLUM avers that, whether by
19 intention or neglect, each of the higher-level managerial Defendants (President COSBY, Vice
20 President PURDY, Regional Managers TWEDELL and EDGE, and District Managers
21 ANDERSON, ELLIOTT, ROBINSON, and LESNIAK) were and are each responsible for
22 cultivating a climate of hostility towards and discrimination directed against a disabled
23 African-American male seeking reasonable accommodation.

24 99. On information and belief and upon thereon CALLUM avers that Defendants’
25 discriminatory conduct and practices described above were carried out (a) at the direction of
26 and with the consent, encouragement, knowledge, and ratification of Defendants; (b) under

1 Defendants' authority, control, and supervision; and/or (c) within the scope of Defendants' and
2 their employees' employment.

3 100. CALLUM avers that the actions of Defendants, whether undertaken personally
4 or through their employees, agents and/or representatives, were undertaken with racially
5 discriminatory animus for the purpose of denying CALLUM access to a place of public
6 accommodation and/or that Defendants' actions, whether undertaken personally or through
7 their employees, agents, and/or representatives, had the effect of denying a male African-
8 American disabled Marine veteran access to a public accommodation on the basis of disability
9 and race.
10

11 101. On information and belief and upon thereon CALLUM avers that Defendants'
12 actions, whether undertaken personally or through their employees, agents, and/or
13 representatives, constitute a pattern and practice of discrimination against a male African-
14 American disabled Marine veteran.

15 102. On information and belief and upon thereon CALLUM avers that Defendants
16 personally and through the actions of their employees, agents, and/or representatives, acted
17 intentionally, maliciously, and with willful, callous, wanton and in reckless disregard for
18 Plaintiff's protected rights.
19

20 103. CALLUM avers that as a proximate result of unlawful conduct by Defendants
21 and their agents, employees, and/or representatives, Plaintiff CALLUM has suffered and is
22 now suffering irreparable loss, injury, emotional harm, mental anguish, embarrassment,
23 humiliation, and degradation, including, though not limited to, outpatient, residential and in-
24 patient psychiatric and psychotherapeutic treatment for suicidal thoughts.

25 104. While CALLUM intends to patronize the establishments and the properties that
26 are the subject of this Complaint in the immediate future, provided the discriminatory action as
27

1 alleged against the Defendants ceases, CALLUM avers that he is likely to suffer irreparable
2 loss and injury in the future, as CALLUM is likely to need prescription pharmaceuticals and
3 other health and/or medical care and may attempt to shop at Defendants' CVS/pharmacy retail
4 community pharmacies, at which time he may again face the discriminatory conduct of the
5 Defendants and their agents, employees, and/or representatives.

6
7 105. On information and belief and upon thereon CALLUM avers that Defendants
8 CVS CAREMARK CORPORATION, SOUTH CAROLINA CVS PHARMACY, LLC, and
9 CVS PHARMACY, INC., as well as Defendants COSBY, PURDY, TWEDELL, EDGE
10 ANDERSON, ELLIOTT, ROBINSON, and LESNIAK had and/or have the authority to create
11 and implement a policy to prevent and stop such racial and other discrimination by their
12 employees, and implement a zero tolerance policy.

13 106. On information and belief, CALLUM avers that the discriminatory experiences
14 the Defendants' inflicted upon CALLUM are a nationwide pattern of discriminatory behavior,
15 policies and practices pervasive throughout CVS/pharmacy locations nationwide, as evidenced
16 by other lawsuits for discriminatory action taken by CVS personnel against members of various
17 racial minorities including, though not limited to, the cases of *Hyun Jin Lee v. CVS*
18 *CAREMARK CORP*, Case Number 13-cv-02432-RBK-AMD (D. NJ 2013) and *Early v. CVS*
19 *Caremark Corp*, Case Number RIC1308906 (CA Superior Ct., Riverside County, CA 2013).

20
21 107. As a matter of law, an officer, employee, or agent of a corporation maybe held
22 liable in his or her individual capacity for commission of a tort, even if that tort was committed
23 in furtherance of the corporation's business.

24 108. CALLUM avers that the actions by CVS and it's agents and/or partners and/or
25 joint venturers and/or employees, acting under the authority and direction of the CVS
26 Defendants and/or their Vice President, Regional Directors, Regional Managers, District
27

1 Managers and/or others in position of authority and with the right and duty to act on behalf of
2 the CVS Defendants are contrary to the requirements of the Americans with Disabilities Act,
3 the Civil Rights Act, and the Affordable Care Act when the Defendants denied CALLUM
4 reasonable accommodation on basis of his race, disability, and gender.

5 109. CALLUM avers this shocking discrimination aimed at CALLUM, as described
6 herein, is unacceptable in any place of public accommodation, and a civilized society cannot
7 tolerate such behavior. Rather than operate within the requirements of the law and within social
8 boundaries of common decency, the CVS Defendants created and maintained an objectively
9 abusive and hostile environment for CALLUM based solely on his race, disability, and gender,
10 and continues to do so, which essentially ratifies forcibly removing CALLUM from the
11 aforementioned CVS/pharmacy retail community pharmacies because of his race, disability,
12 and/or gender.

13 110. CALLUM avers that the acts of ratifying the bias were deliberately calculated to
14 make CALLUM's experience so intolerable and unequal as to bar CALLUM and others
15 similarly situated from the premises in the future in the same manner as if CALLUM had been
16 forcibly removed.

17 111. CALLUM avers that by failing to adequately intervene after receiving
18 CALLUM's written notice of the unlawful conduct, Defendants ratified the conduct alleged
19 herein, which constitutes evidence of a policy, practice, custom or procedure to deprive
20 individuals of their constitutional rights.

21 112. On information and belief, CVS is "the third largest provider of drug benefits to
22 eligible beneficiaries under the Federal Government's Medicare Part D program." H.R.
23 Committee on Oversight and Government Reform, *Ahead of Postal Reform: Hearing from*
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1 *USPS Business Partners*, 113th Cong. 1, April 10, 2013 (Testimony of Mr. Carl Janssens, Vice
2 President, Logistics and Facility Engineering, CVS Caremark Corporation).

3 113. On information and belief, as of year-end 2013, Defendant CVS CAREMARK
4 CORPORATION had total revenue of \$126.8 billion, of which the punitive damages demanded
5 herein are within Defendants' ability to pay and which represent an award that is reasonable in
6 its amount and justified by the circumstances of this case, in light of the purpose to punish
7 Defendants and to deter Defendants from repeating such conduct.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATIONS OF THE AMERICANS WITH DISABILITIES ACT of 1990**

10 **[42 U.S.C. § 12101, *et seq.*]**

11 114. Plaintiff hereby incorporates by reference each of the allegations set forth in the
12 preceding paragraphs as if realleged fully herein.

13 115. The Americans with Disabilities Act of 1990 is a sweeping civil rights law
14 designed to "provide a clear and comprehensive national mandate for the elimination of
15 discrimination against persons with disabilities." 42 U.S.C. § 12101 (b)(1). In passing the
16 ADA, Congress expressly found:
17

18 unlike individuals who have experienced discrimination on the basis of race, color, sex,
19 national origin, religion, or age, individuals who have experienced discrimination on the
20 basis of disability have often had no legal recourse to redress such discrimination.

21 42 U.S.C. § 12101 (a)(4). Congress enacted the ADA in light of its findings that "individuals
22 with disabilities continually encounter various forms of discrimination, including outright
23 intentional exclusion, the discriminatory effects of architectural, transportation, and
24 communication barriers, overprotective rules and policies, failure to make modifications to
25 existing facilities and practices, exclusionary qualification standards and criteria, segregation,
26 and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities." 42
27

1 U.S.C. § 12101(a)(5). Further, Congress stated that a primary purpose of the ADA is "to
 2 provide clear, strong, consistent, enforceable standards addressing discrimination against
 3 individuals with disabilities." 42 U.S.C. § 12101 (b)(2).

4 116. A key enforcement mechanism is the statute's private right of action allowing
 5 individuals to sue for injunctive and declaratory relief. For private suits, title III of the ADA
 6 adopts the "remedies and procedures" set forth in title II of the 1964 Civil Rights Act, 42
 7 U.S.C. § 2000a-3(a). Title II provides: "[w]henever any person has engaged or there are
 8 reasonable grounds to believe that any person is about to engage in any act or practice
 9 prohibited by section 2000a-2 of this title, a civil action for preventive relief, including an
 10 application for a[n] . . . injunction . . . may be instituted by the person aggrieved[.]" 42 U.S.C. §
 11 2000a-3(a).
 12

13 117. To succeed as a matter of law under title III of the ADA, CALLUM must prove:

- 14 a. Defendant owns or operates a place of public accommodation;
- 15 b. CALLUM, the aggrieved individual, is an individual with a disability;
- 16 and
- 17 c. Defendants discriminated against CALLUM on the basis of his
- 18 disability.
- 19

20 42 U.S.C. § 12182(a) & 42 U.S.C. § 12182(b).

21 118. Each of the CVS/pharmacy retail community pharmacies at which CALLUM
 22 attempted to gain reasonable accommodation and which are the subject of this lawsuit are
 23 public accommodations as the operations of such entities affects commerce and because each
 24 of the CVS/pharmacy retail community pharmacies is a "pharmacy, professional office of a
 25 health care provider, hospital, or other service establishment." 42 U.S.C. § 12181(7)(F).
 26
 27

119. To address this broad range of discrimination in the context of public accommodations, Congress enacted Title III, which provides in part:

No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

42 U.S.C. § 12182. By its clear text, Title III requires a public accommodation to provide individuals with disabilities more than simple physical access to the accommodation's facilities. Congress recognized that "individuals with disabilities continually encounter various forms of discrimination" including not only barriers to physical access, but also other forms of exclusion and "relegation to lesser services, programs, activities, benefits, jobs, or other opportunities." 42 U.S.C. § 12101(a)(5) (emphasis added); *see also* H.R. Rep. No. 485, Pt. 2, 101st Cong., 2d Sess. 35-36 (1990) ("lack of physical access to facilities" was only one of several "major areas of discrimination that need to be addressed"); H.R. Rep. No. 485, Pt. 3, 101st Cong., 2d Sess. 54 (1990) ("It is not sufficient to only make facilities accessible and usable; this title prohibits, as well, discrimination in the provision of programs and activities conducted by the public accommodation.").

120. For that reason, the Act applies not only to barriers to physical access to business locations, but also to any policy, practice, or procedure that operates to deprive or diminish disabled individuals' full and equal enjoyment of the privileges and services offered by the public accommodation to the public at large. 42 U.S.C. § 12182. Thus, a public accommodation may not have a policy that specifically excludes individuals with disabilities from services. 42 U.S.C. § 12182(b)(1)(A)(i). The statute also defines "discrimination" as including:

the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability . . . from fully and equally enjoying any goods, services,

1 facilities, privileges, advantages, or accommodations, unless such criteria can be shown
2 to be necessary for the provision of the goods, services, facilities, privileges,
advantages, or accommodations being offered.

3 42 U.S.C. § 12182(b)(2)(A)(i). The commentary to the implementing regulations explains that
4 this provision “makes it discriminatory to impose policies or criteria that, while not creating a
5 direct bar to individuals with disabilities, indirectly prevent or limit their ability to participate.”
6 28 C.F.R. Pt. 36, App. B, p. 641 (commentary to 28 C.F.R. 36.301).
7

8 121. A public accommodation also may not refuse to make reasonable modifications
9 to a policy or practice that has the consequence of denying such individuals access to its
10 services unless making a reasonable modification to that policy would fundamentally alter the
11 nature of the services. 42 U.S.C. § 12182(b)(2)(A)(ii).

12 122. Because Defendants operate a place of public accommodation, they may not
13 discriminate against individuals with disabilities “in the full and equal enjoyment” of the
14 goods, services, facilities, privileges, advantages, or accommodations of any place of public
15 accommodation as Defendants own, lease, lease to, or operate a place of public accommodation
16 in violation of the ADA. This means, among other things, that Defendants generally may not
17 impose or apply unnecessary “eligibility criteria that screen out or tend to screen out an
18 individual with a disability” from shopping or filling prescriptions for pharmaceuticals. 42
19 U.S.C. § 12182(b)(2)(A)(i). Defendants must make “reasonable modification in policies,
20 practices, or procedures, when such modifications are necessary to afford such services [or]
21 privileges . . . to individuals with disabilities” unless doing so would fundamentally alter the
22 nature of the goods, services, facilities, privileges, advantages, or accommodations, which
23 CALLUM believes Defendants cannot do since they provided virtually identical
24 accommodation to others who alleged similar disability as CALLUM. 42 U.S.C.
25 §12182(b)(2)(A)(ii).
26
27

123. For an aspect of a defendant's operation to be subject to Title III, there must be a connection between the service Plaintiff seeks and the place of public accommodation. In the words of the statute, the Act covers discrimination "in the full and equal enjoyment of the . . . services [or] privileges . . . of any place of public accommodation." 42 U.S.C. § 12182(a).

124. To be protected by the ADA one must have a disability, defined by the ADA as "(a) a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment." 42 U.S.C. § 12102(2) (1994); 29 C.F.R. § 1630.2(g) (1996). The ADA rule defines "mental impairment" to include "any mental or psychological disorder, such as . . . emotional or mental illness." 29 C.F.R. § 1630.2(h)(2) (1996).

125. Examples of "emotional or mental illnesses" include major depression, anxiety disorders, including panic disorder, obsessive compulsive disorder, personality disorders, and post-traumatic stress disorder. The fourth edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders is relevant for identifying these disorders. The DSM-IV has been recognized as an important reference by courts and is widely used by American mental health professionals for diagnostic and insurance reimbursement purposes. *See, e.g., Boldini v. Postmaster Gen.*, 928 F. Supp. 125, 130 (1995), where the court held, "in circumstances of mental impairment, a court may give weight to a diagnosis of mental impairment which is described in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association." Post Traumatic Stress Disorder, and accompanying anxiety disorders like agoraphobia, is a bona fide medical and/or mental disorder as classified in the American Psychiatric Association's Diagnostic and Statistics Manual (DSM-IV). The Americans with Disabilities Act also recognizes PTSD as a mental disability whose victims are protected. Additionally, under several ADA-related holdings, an individual would be

1 substantially limited if his/her relations with others were characterized on a regular basis by
2 "consistently high levels of hostility (and/or) social withdrawal."

3 126. CALLUM avers that he and/or his family shopped frequently at CVS retail
4 community pharmacies before his diagnosis with PTSD, but has not shopped at any
5 CVS/pharmacy location since the 2013 incidents as alleged herein out of fear that CVS and the
6 defendants will discriminate against him. CALLUM avers that he has and will continue to shop
7 at other pharmacies in locations served by CVS, but he avoids CVS out of fear of
8 discrimination. CALLUM would shop at CVS again, provided he was assured that CVS had
9 taken steps to stop its discriminatory treatment of disabled Marine veterans who request
10 disability accommodation.
11

12 127. No difference between agoraphobic men and women, as potential customers of
13 the Defendants, has been offered as a rational basis for accommodating one and not the other.
14 CVS/pharmacy's are places of public accommodation, not private clubs, and that its
15 preferences to accommodate only certain of its patrons are no justification under the Equal
16 Protection Clause. Such preferences, no matter how widely shared by Defendants' female
17 employees and/or clientele, bear no rational relation to the suitability of male Marine veterans
18 who suffer from service-connected PTSD and PTSD-related agoraphobia as customers worthy
19 of accommodation of or by the CVS Defendants.
20

21 128. Based on the facts stated within this Complaint, Defendants discriminated
22 against CALLUM directly, or through contractual, licensing, or other arrangements, to a denial
23 of the opportunity to CALLUM to participate in or benefit from the goods, services, facilities,
24 privileges, advantages, or accommodations of an entity, in violation of the ADA.

25 129. Based on the facts stated within this Complaint, Defendants discriminated
26 against CALLUM as it is discriminatory to afford an individual, on the basis of a disability or
27

1 disabilities of such individual, directly, or through contractual, licensing, or other arrangements
2 with the opportunity to participate in or benefit from a good, service, facility, privilege,
3 advantage, or accommodation that is not equal to that afforded to other individuals, in violation
4 of 42 U.S.C. § 12182.

5 130. Based on the facts stated within this Complaint, Defendants discriminated
6 against CALLUM as it is discriminatory to provide an individual, on the basis of a disability or
7 disabilities of such individual, directly, or through contractual, licensing, or other arrangements
8 with a good, service, facility, privilege, advantage, or accommodation that is different or
9 separate from that provided to other individuals.

10 131. Based on the facts stated within this Complaint, Defendants discriminated
11 against CALLUM as Defendants failed to afford to an individual with a disability
12 accommodation in the most integrated setting appropriate to the needs of the individual, in
13 violation of 42 U.S.C. § 12182.

14 132. Based on the facts stated within this Complaint, Defendants discriminated
15 against CALLUM as Defendants utilized standards or criteria or methods of administration that
16 have the effect of discriminating on the basis of disability; or that perpetuate the discrimination
17 of others who are subject to common administrative control, in violation of 42 U.S.C. § 12182.

18 133. Based on the facts stated within this Complaint, Defendants discriminated
19 against CALLUM as it is discriminatory to exclude or otherwise deny goods, services,
20 facilities, privileges, advantages, accommodations, or other opportunities to an individual or
21 entity because of the known disability of an individual with whom the individual is known to
22 have a relationship or association, in violation of 42 U.S.C. 12182. *See Niece v. Fitzner*, 922
23 F. Supp 1208 (1996).

1 134. Based on the facts stated within this Complaint, Defendants discriminated
2 against CALLUM as Defendants engaged in the specific prohibitions as stated in 42 U.S.C. §
3 12182 and elsewhere in the ADA.

4 135. Based on the facts stated within this Complaint, Defendants discriminated
5 against CALLUM as Defendants failed to demonstrate that the removal of any barrier is not
6 readily achievable, and made such goods, services, facilities, privileges, advantages, or
7 accommodations available through alternative methods in a segregated manner, in violation of
8 42 U.S.C. § 12182.
9

10 136. CALLUM has good cause to believe and in fact believes that the Defendants
11 will continue to operate an inaccessible facility and to enforce illegal policies and practices,
12 which will result in future discrimination against CALLUM, in violation of the Americans with
13 Disabilities Act.

14 137. As part of a complete life, CALLUM wants to be able to travel and use public
15 accommodations without restriction, which includes visiting Defendants' facilities in the
16 future, but has been deterred from such use of the public accommodation because Defendants'
17 discriminatory policies, practices and procedures prevent full and equal access to the public
18 accommodation. CALLUM believes that, and the evidence shows that, Defendants' illegal
19 practices will continue and will result in future discrimination against CALLUM, until an
20 injunction is issued under the Americans with Disabilities Act.
21

22 138. The failure to permit a disabled person to participate in ordinary life activities,
23 such as those afforded by Defendants' public accommodation, severely affects the quality of
24 CALLUM's life and produces an irreparable and continuing injury that cannot be compensated
25 or remedied solely by the award of money. Accordingly, among other remedies, CALLUM
26 seeks an injunctive order requiring compliance with federal laws allowing access to
27

Defendants' facilities by disabled Marine veterans who suffer from PTSD and other PTSD-related symptoms, including but not limited to, PTSD-associated agoraphobia, and to stop all violations of the civil rights laws which exist at the Defendants' properties, which will require modification of Defendants' policies, practices and procedures as alleged herein and as the Court may deem proper.

139. CALLUM prays for judgment and relief as set forth herein.

SECOND through FIFTH CAUSES OF ACTION

DISCRIMINATION IN VIOLATION OF THE CIVIL RIGHTS ACT of 1964

SECOND: 42 U.S.C. § 1981 (EQUAL RIGHTS)

140. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

141. Congress enacted the Civil Rights Act to ensure "that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white" *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443 (1968). "The aim of [the Act] is to remove the impediment of discrimination from a minority citizen's ability to participate fully and equally in the marketplace." *Bobbitt by Bobbitt v. Rage, Inc.*, 19 F. Supp. 2d 512, 516 (W.D.N.C. 1998); *see Patterson v. McLean Credit Union*, 491 U.S. 164, 190 (1989).

142. Through 42 U.S.C. § 1981, "Congress intended to prohibit 'all racial discrimination, private and public, in the sale of property'" and in the making and enforcement of contracts. *Runyon v. McCrary*, 427 U.S. 160, 170 (1976)(quoting *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 437 (1968)). It is the aim of the statute "to remove the impediment of discrimination from a minority citizen's ability to participate fully and equally in the marketplace." *Brown v. American Honda Motor Co.*, 939 F.2d 946, 949 (11th Cir. 1991).

1 143. CALLUM avers that he is a member of a racial minority, that defendants
2 intended to discriminate against him on the basis of race, and the discrimination concerned at
3 least one, if not more, of the activities enumerated in the statute.

4 144. On information and belief, CALLUM avers that the defendants treated similarly
5 situated individuals outside of his racial group differently.

6 145. On information and belief, CALLUM avers that Defendants were motivated by
7 racial animus when they refused to contract on equal terms with CALLUM on the basis of his
8 race
9

10 146. On information and belief, CALLUM avers that by the actions described above,
11 Defendants have denied and/or impaired CALLUM's right to make, perform, modify,
12 terminate and/or enforce contracts and have denied CALLUM the enjoyment of all benefits,
13 privileges, terms and conditions of the contractual relationship into which CALLUM might
14 enter with the CVS Defendants.

15 147. On information and belief, CALLUM avers that those benefits, privileges, terms
16 and conditions of which CALLUM was deprived or whose right to same was impaired by acts
17 of discrimination, were enjoyed by white citizens of the United States, in violation of 42 U.S.C.
18 § 1981.
19

20 148. On information and belief, CALLUM avers that the discrimination complained
21 of is causally connected to his race, black.

22 149. Indirect evidence of discriminatory intent is circumstantial evidence from which
23 racial motivation can be inferred. *See Hampton v. Dillard Dep't Stores*, 247 F.3d 1091, 1109
24 (10th Cir. 2001), cert. denied, 534 U.S. 1131 (2002) (stating that evidence of discrimination
25 need not be admitted); *Joseph v. N.Y. Yankees P'ship*, No. 00 CIV. 2275(SHS), 2000 WL
26 1559019, at *5 (S.D.N.Y. Oct. 19, 2000) (explaining that discriminatory intent can be inferred
27

1 when plaintiff can show specific instances where individuals situated similarly “in all relevant
2 aspects” were treated differently according to their race); *Washington v. Duty Free Shoppers,*
3 *Ltd.*, 710 F. Supp. 1288, 1289 (N.D. Cal. 1988) (explaining that a confession of discrimination
4 is not necessary for finding evidence of discrimination).

5 150. CALLUM avers that the facts as alleged herein present sufficient evidence that
6 the CVS Defendants denied CALLUM entry while white customers were allowed to enter and
7 receive the accommodation and service and that CVS denied CALLUM the right to “make and
8 enforce contracts on the same basis as white citizens” when CVS refused to serve him but did
9 accommodate and serve CALLUM’s white female friend.
10

11 151. CALLUM avers he has the option of proving that he was deprived of services
12 while similarly situated persons outside the protected class were not. *Callwood v. Dave &*
13 *Buster’s*, 98 F. Supp. 2d 694, 707 (D. MD. 2000); see also *Murrell v. Ocean Mecca Motel*, 262
14 F.3d 253, 257 (4th Cir. 2001) (stating similar test for establishing a prima facie case of race
15 discrimination in eviction from motel); see *Christian v. Wal-Mart Stores*, 252 F.3d 862, 873
16 (6th Cir. 2001) (This language: “which makes actionable the deprivation of service, as opposed
17 to an outright refusal of service, better comprehends the realities of commercial establishment
18 cases in which an aggrieved plaintiff may have been asked to leave the place of business prior
19 to completing (his) purchase, refused service within the establishment, or refused outright
20 access to the establishment. It is thus in harmony with the promise of § 1981(b), which
21 guaranties all persons equal rights in “the making, performance, modification, and termination
22 of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the
23 contractual relationship.”).

24
25 152. CALLUM attempted to contract with the CVS Defendants but was actually and
26 repeatedly prevented from doing so because CALLUM was denied reasonable accommodation
27

1 into all CVS/pharmacy locations CALLUM attempted to gain entry, and therefore Plaintiff
2 states a plausible cause of action under § 1981 because similarly situated Caucasian customers
3 were allowed reasonable accommodation to enter and shop. CALLUM avers that the
4 CVS/pharmacy's refusal to allow him reasonable accommodation to enter the store is
5 equivalent to a refusal to contract; it is a discriminatory refusal to deal, as the license to enter
6 the store is necessary to make good on the store's implicit invitation to deal. The CVS
7 Defendants' refusal to accommodate CALLUM denied a male African-American the right to
8 contract on the same terms and conditions as is enjoyed by white citizens. Further, race-based
9 harassment interferes with the right of a shopper of color to contract on the same terms as white
10 customers. *See Brief of Amicus Curiae Lawyers' Committee For Civil Rights Under Law*, at 5,
11 *Hampton v. Dillard Dep't Stores*, 247 F.3d 1091 (10th Cir. 2001) (Nos. 98–3011, 98–3261)
12 cert. denied, 534 U.S. 1131 (2002).

14 153. CALLUM further believes he can demonstrate that any reasons Defendants'
15 may offer that purport to show they excluded CALLUM for legitimate, non-discriminatory
16 reasons are a pretext for discrimination, as CALLUM avers he can show that any such reasons
17 proffered by Defendants' have no basis in fact, that the reasons are not the actual reasons, and
18 that the stated reasons are insufficient to explain Defendants' action. *McDonnell Douglas*
19 *Corp. v. Green*, 411 U.S. 793, 804 (1973); see *Christian v. Wal-Mart Stores*, 252 F.3d at 879;
20 *Johnson v. Univ. of Cincinnati*, 215 F.3d 561, 572 (6th Cir. 2000).

22 154. As a result of the violations of CALLUM's rights under 42 U.S.C. § 1981,
23 CALLUM has been damaged and claims entitlement to any and all relief as may be afforded
24 him to redress said wrongs.

155. There is no exhaustion of state remedies requirement prior to CALLUM bringing this Complaint in federal court. *Plummer v. Chicago Journeyman Plumbers' Local Union No. 130*, 452 F.Supp. 1127 (1978), rev'd on other grounds 657 F.2d 890 (7th Cir. 1981).

156. The District Court generally exercises jurisdiction in conformity with the laws of the United States; however, in cases where those laws are not adequate to furnish suitable remedies, state common law governs. 42 U.S.C. § 1988.

157. CALLUM maintains that the defendants, and each and all of them, are directly liable to CALLUM under 42 U.S.C. § 1981 for the deliberate and intentional actions of the CVS defendants and their agents and/or partners and/or joint venturers and/or employees and/or representatives.

158. CALLUM maintains alternately that the CVS Defendant or Defendants is or are liable to CALLUM under 42 U.S.C. § 1981 pursuant to the doctrine of respondeat superior.

159. Punitive damages are available under 42 U.S.C. § 1981.2 “[A] jury may be permitted to assess punitive damages” in a civil rights case “when the defendant’s conduct is shown to be motivated by evil motive or intent, or when it involves recklessness or callous indifference to the federally protected rights of others.” *Smith v. Wade*, 461 U.S. 30, 56 (1983) (applying common law tort rules to action brought under 42 U.S.C. § 1983); *see also Kolstad v. American Dental Ass’n*, 527 U.S. 526, 535 (1999) (recognizing that Congress adopted the Wade standard in providing for punitive damages in Title VII and ADA cases); *Bisbal-Ramos v. City of Mayaguez*, 467 F.3d 16, 25 (1st Cir. 2006) (quoting Wade).

160. CALLUM proffers that for the same reasons that punitive damages are necessary to deter the Defendants from engaging in discriminatory conduct in the future, this Court should fashion an appropriate injunction ordering the CVS Defendants to take affirmative steps to prevent similar occurrences.

1 161. CALLUM avers that he has and will continue to shop at other pharmacies in
2 locations served by CVS, but he avoids CVS out of fear of discrimination. CALLUM would
3 shop at CVS again, if he was assured that CVS had taken steps to stop its discriminatory
4 treatment of black customers, as alleged herein.

5 162. On information and belief, Defendants engaged in intentional discrimination
6 based on CALLUM's perceived race, color, ethnicity, or ancestry, and caused CALLUM to
7 suffer deprivation of his right to make and enforce contracts, with deliberate and substantial
8 disregard for CALLUM's rights.

9 163. Defendants' actions violated 42 U.S.C. § 1981, *et seq.* This Court cannot in
10 good conscience remain silent while South Carolina citizens are subject to invidious racial
11 discrimination.

12 164. CALLUM prays for judgment and relief as set forth herein.

13
14 **THIRD: 42 U.S.C. § 1985 (CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS)**

15 165. Plaintiff hereby incorporates by reference each of the allegations set forth in the
16 preceding paragraphs as if realleged fully herein.

17 166. 42 U.S.C. § 1985(3) provides citizens with a cause of action against private
18 conspiracies to violate constitutional rights. No state action prerequisite exists for such
19 lawsuits.

20 167. CALLUM alleges conspiracy to interfere with his civil rights under 42 U.S.C. §
21 1985(3). Section 1985(3) provides, in pertinent part, that: "If two or more persons ... go ... on
22 the premises of another, for the purpose of depriving ... any person ... of the equal protection of
23 the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing
24 or hindering the constituted authorities ... from giving or securing to all persons... the equal
25 protection of the laws[;] ... the party so injured or deprived may have an action for the recovery
26
27

1 of damages occasioned by such injury or deprivation” *Id.* It is well settled that “[t]o state
 2 a claim under §1985(3), there must be ‘some racial, or perhaps otherwise class-based
 3 invidiously discriminatory animus behind the conspirators’ action.” *Gedrich v. Fairfax County*
 4 *Dep’t of Family Servs.*, 282 F. Supp. 2d 439, 459 (E.D. Va. 2003)(quoting *Griffin v.*
 5 *Breckenridge*, 403 U.S. 88, 102, 91 S.Ct. 1790, 29 L. Ed. 2d 338 (1971)).

6
 7 168. Defendant conspirator(s) become the agent of the other conspirator(s), and any
 8 act done by one of the combination is regarded under the law as the act of both or all. In other
 9 words, what one does, if there is this combination, becomes the act of both or all of them, no
 10 matter which individual may have done it. This is true as to each member of the conspiracy,
 11 even those whose involvement was limited to a minor role in the unlawful transaction, and it
 12 makes no difference whether or not such individual shared in the profits of the actions. (Am.
 13 Jur. Pleading and Practice Forms, Conspiracy § 9).

14 169. CALLUM herein alleges that the Defendants, and each of them, engaged in an
 15 illegal conspiracy to interfere with CALLUM’s civil rights in violation of 42 U.S.C. § 1985.

16
 17 170. Specifically, the Defendants, and each of them, did, in violation of 42 U.S.C. §
 18 1985(3), conspire with another for the purpose of depriving, either directly or indirectly,
 19 CALLUM as a member of the African-American (black) class of persons, of the equal
 20 protection of the laws, and of equal privileges and immunities under the laws.

21 171. As alleged herein, Defendants maliciously conspired with conspirators/co-
 22 conspirators with the intent to injure CALLUM.

23 172. Defendants SOSA, KEELER, PENDERGRASS, CESSNA, GATES, and the
 24 unidentified white male driver of the gray truck each essentially admitted that the real reason
 25 for denying CALLUM reasonable accommodation or to make and enforce contracts was not
 26 only his “suspicious” and/or “unusual request” and disability, but specifically due to his race.
 27

1 173. Each act done in pursuance of the conspiracy by one of several conspirators is,
2 in contemplation of law, an act for which each is jointly and severally liable, and this liability
3 applies to damages accruing prior to the person's joining the conspiracy or thereafter and
4 regardless of whether the person took a prominent or an inconspicuous part in the execution of
5 the conspiracy. (Am. Jur. 2d, Conspiracy §§ 70, 71).

6 174. A civil conspiracy is a combination of two or more persons by some concerted
7 action to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in
8 itself criminal or unlawful by criminal or unlawful means. The conspiratorial agreement need
9 not be in any particular form, and need not extend to all the details of the conspiratorial
10 scheme, so long as its primary purpose is to cause injury to another/CALLUM. The gist of a
11 civil conspiracy is not the unlawful agreement, but the damage resulting from that agreement
12 and its execution. The cause of the action is not created by the conspiracy, but by the wrongful
13 acts done by the Defendants to the injury of CALLUM. (Am. Jur. Pleading and Practice
14 Forms, Conspiracy § 7).

15 175. A conspiracy may be proved by circumstantial evidence. This is because people
16 who engage in such agreements may not voluntarily proclaim to others their purpose; therefore,
17 a reasonable person/mind may draw on circumstantial evidence to determine whether or not a
18 conspiracy did exist.

19 176. A conspiracy may be established by inference from the nature of the acts
20 complained of; the individual and collective interests of the alleged conspirators; the situation
21 and relation of the parties at the time of the commission of the acts; the motives that produced
22 them; and all of the surrounding circumstances preceding and attending the culmination of the
23 common plan or design. (Am. Jur. Pleading and Practice Forms, Conspiracy § 8).

177. The Defendants, each and every one of them, acquired, possessed, and maintained a general knowledge of the conspiracy's objectives to inflict wrongs against and/or injury on CALLUM as described in this Complaint.

178. CALLUM avers the Defendants combined to engage in a scheme which was intended to violate the law and concealed and secreted same.

179. CALLUM avers the Defendants combined to engage in a scheme which was intended to violate the rights of CALLUM.

180. CALLUM avers the Defendants combined to engage in a scheme which was intended to violate the rights of the public-at-large.

181. The facts, evidence and legal conclusions set forth in this instant Complaint supports that Defendants (which consist of two or more persons): (a) engaged in conspiracy(ies) leveled against CALLUM; (b) engaged in conspiracy(ies) to deter, intimidate, and threaten CALLUM from engaging in protected activities (i.e., making and enforcing contracts, making charges/filing lawsuits, testifying, assisting or participating in enforcement proceedings) and performing duties owed as a citizen to perform his duty to report matters of public policy and/or public interest; and (c) engaged in conspiracy(ies) which resulted in injury/harm to CALLUM. *Malley-Duff & Assoc. v. Crown Life Ins. Co.*, 792 F.2D 341 (3rd Cir. 1986) judgment affirmed 483 U.S. 143 (1987); *Chahal v. Paine Webber*, 725 F.2d 20 (2nd Cir. 1984).

182. Although it is true that a corporation cannot conspire with itself, a conspiracy may be established where individual defendants are named and those defendants acted outside the scope of their employment for personal reasons. *Swann v. City of Dallas*, 922 F.Supp. 1184 (N.D. Texas 1996)(citing *Garza v. City of Omaha*, 814 F.2d 553, 556 (8th Cir.1987)), *aff'd*, 131 F.3d 140 (5th Cir.1997). The facts, evidence and legal conclusion contained in this instant

1 Complaint will support that Defendants acted both within and outside the scope of their
2 employment for personal reasons and bias towards CALLUM. Moreover, said conspiracy(ies)
3 was/were inspired and motivated by Defendants' engagement in systematic racial bias,
4 discriminatory and retaliatory practices against CALLUM because of his race (African-
5 American/black), knowledge of his engagement in protected activities, and systematic
6 discriminatory practices.

7
8 183. The facts, evidence and legal conclusion will support that the CVS Defendants,
9 and each of them, were part of conspiracy(ies) against CALLUM that resulted in
10 conspiracy(ies) of a pattern of unlawful behavior and/or systematic discriminatory practices –
11 discrimination, retaliation, and harassment – as well as a conspiracy based on Defendants'
12 knowledge of CALLUM's engagement in protected activities (i.e., discrimination for making
13 charges/filing lawsuits, testifying, assisting, or participating in litigation/proceedings), thereby
14 conspiring to deprive CALLUM rights secured and guaranteed under the Constitution and other
15 laws of the United States.

16
17 184. In doing the acts alleged, Defendants also acted in their official capacities in
18 regards to their interest in "securing" their stores from a "nigger" "wearing a towel (and) trying
19 to get a special accommodation" because "so many blacks think they are entitled to special
20 treatment."

21 185. For these reasons, the Defendants are liable for violation of 42 U.S.C. § 1985.

22 186. Each Defendant conspirator is jointly and severally liable for all damages
23 resulting from the conspiracy, and where that conspiracy is proven, any act done by any one of
24 the two or more persons so conspiring, in furtherance of the common design and in accordance
25 with the general plan, becomes the act of all, and each conspirator is responsible for such act.

26 It is not necessary, in order to establish the liability of a participant in an unlawful conspiracy,
27

1 to show that such person was a party to its contrivance at its inception. In other words, a
 2 conspiracy may start with a few participants and then add others as it progresses. If so, the
 3 conspirator who becomes a part of the conspiracy at or near the end is just as responsible for
 4 the damage that results as the one who was in it at the beginning. The actual time when any of
 5 them might have come into understanding makes no difference. Therefore, when it is shown
 6 that the individual who came in at a later date knew of the unlawful design and willfully aided
 7 in its execution, such individual is chargeable with the consequences that flowed from the
 8 unlawful design.
 9

10 187. CALLUM prays for judgment and relief as set forth herein.

11 **FOURTH: 42 U.S.C. § 1986 (NEGLECT TO PREVENT DEPRIVATION OF RIGHTS)**

12 188. Plaintiff hereby incorporates by reference each of the allegations set forth in the
 13 preceding paragraphs as if realleged fully herein.

14 189. CALLUM avers that 42 U.S.C. § 1986 creates a cause of action for the failure to
 15 prevent a conspiracy within the meaning of 42 U.S.C. § 1985:

16 Every person who, having knowledge that any of the wrongs conspired to be done, and
 17 mentioned in [42 U.S.C. § 1985], are about to be committed, and having power to
 18 prevent or aid in preventing the commission of the same, neglects or refuses to do so, if
 19 such wrongful act be committed, shall be liable to the party injured, or his legal
 representatives, for all damages caused by such wrongful act, which such person by
 reasonable diligence could have prevented.

20 An essential element of a claim under 42 U.S.C. § 1986 is the existence of a § 1985(3) claim.

21 *Williams v. St. Joseph Hospital*, 629 F.2d 448, 451 – 452 (7th Cir. 1980).

22 190. CALLUM avers that the CVS Defendants, did, in violation of 42 U.S.C. § 1986,
 23 with knowledge of the wrongs conspired to be done at the request and instruction of one or
 24 more of the CVS Defendants, were about to be committed, and having power to prevent or aid
 25 in preventing the commission of same, neglected or refused to do so, to wit: neglecting or
 26

1 refusing to prevent, with knowledge of a conspiracy to deprive, either directly or indirectly,
2 CALLUM as a member of the African-American/black class of persons, of the equal protection
3 of the laws, and of equal privileges and immunities under the laws.

4 191. Defendants SOSA, KEELER, PENDERGRASS, CESSNA, GATES, and the
5 unidentified white male driver of the gray truck each admitted, or at least implied by their
6 statements, that "our whole district and other districts know some black guy wearing a towel
7 was trying to get a special accommodation but none of them are going to help you" because
8 "nigger(s). . . should focus on overcoming (disability) and come in the store during business
9 hours once (CALLUM's) condition gets better and allows (CALLUM) to do that," else,
10 CALLUM needs to "take (his) black ass on (his) way because (CVS Defendants will) call the
11 police and the police are going to make you be around a lot of people."

12 192. CALLUM avers the CVS Defendants, and each of them, had knowledge of the §
13 1985 conspiracy(ies), the power to protect CALLUM, and neglected or refused to protect
14 CALLUM, and because of this the CVS Defendants, and each of them, are liable under § 1986.
15 Further, at least one or more of the CVS Defendants were bystanders who may not themselves
16 have been conspirators under § 1985, yet remain liable under § 1986. After all, those with
17 knowledge of the underlying conspiracy puts them in the optimal position to prevent it. A
18 negligent failure to protect by an actor with knowledge of a § 1985 conspiracy and power to
19 protect its victims is actionable. *See Clark v. Clabaugh*, 20 F.3d 1290, 1298 (3d Cir. 1994)
20 (finding that negligence is sufficient to maintain § 1986 claim).
21

22 193. CALLUM avers that at least one or more of the CVS Defendants could have
23 stopped the conspiracy he or she was part of to violate CALLUM's civil rights on at least one,
24 if not more, occasion. CALLUM avers that the facts, evidence and legal conclusions alleged in
25 this Complaint demonstrate that at least one or more of the CVS Defendants had actual
26
27

1 knowledge of the § 1985 conspiracy, that at least one or more of the CVS Defendants had the
 2 power to prevent or aid in preventing the commission of the § 1985 violations, that at least one
 3 or more of the CVS Defendants neglected or refused to prevent the § 1985 conspiracy, and that
 4 one or more wrongful act(s) was committed by the conspirators.

5
 6 194. For these reasons, each Defendant is liable under 42 U.S.C. § 1986 for all
 7 damages that he or she could have prevented with reasonable diligence. *Clark v. Clabaugh*, 20
 8 F.3d at 1298.

9 195. CALLUM prays for judgment and relief as set forth herein.

10 **FIFTH: 42 U.S.C. § 2000d, *et seq.* (TITLE VI of the CIVIL RIGHTS ACT of 1964)**

11 196. Plaintiff hereby incorporates by reference each of the allegations set forth in the
 12 preceding paragraphs as if realleged fully herein.

13 197. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) prohibits
 14 discrimination in any program or activity that receives federal financial assistance. As
 15 applicable to the underlying facts, the term “program or activity” and the term “program” mean
 16 all of the operations of . . .

17
 18 (3)(A) an entire corporation, partnership, or other private organization, or an
 19 entire sole proprietorship—

20 (i) if assistance is extended to such corporation, partnership, private
 21 organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health
 22 care, housing, social services, or parks and recreation; or

23 (3)(B) the entire plant or other comparable, geographically separate facility to which
 24 Federal financial assistance is extended, in the case of any other corporation,
 25 partnership, private organization, or sole proprietorship; or

26 (4) any other entity which is established by two or more of the entities described in
 27 paragraph (3);

any part of which is extended Federal financial assistance.

1 198. CALLUM has an implied private right of action under Title VI against
2 recipients of federal financial assistance who engage in such prohibited conduct. *Alexander v.*
3 *Sandoval*, 532 U.S. 275, 279 (2001) (“Private individuals may sue to enforce [Title VI] and
4 obtain both injunctive relief and damages.”); *Cannon v. U. of Chicago*, 441 U.S. 677, 703
5 (1979) (same). Because aggrieved individuals may bring civil actions under Title VI against
6 recipients of federal financial assistance who engage in prohibited discrimination or retaliation,
7 CALLUM requests both injunctive relief and damages.
8

9 199. Defendants CVS CAREMARK CORPORATION and/or SOUTH CAROLINA
10 CVS PHARMACY, LLC, and/or CVS PHARMACY, INC., and/or each of the CVS/pharmacy
11 locations identified herein are recipients of federal financial assistance.

12 200. CALLUM avers that Defendants engaged in intentional discrimination based
13 upon CALLUM’s perceived race, color, gender or national origin.

14 201. Defendants’ actions violated Title VI of the Civil Rights Act of 1964, 42 U.S.C.
15 § 2000d.
16

17 202. CALLUM prays for judgment and relief as set forth herein.

18 203. Accordingly, among other remedies, CALLUM seeks an injunctive order
19 requiring compliance with state and federal laws allowing access to Defendants’ facilities by
20 disabled African-Americans males, which will require modification of Defendants’ policies,
21 practices and procedures as alleged herein and as the court may deem proper.

22 204. CALLUM also seeks any other order that will redress the discrimination which
23 has occurred and to which CALLUM has been subjected, is being subjected to and will be
24 subjected to in the future.
25
26
27

SIXTH CAUSE OF ACTION

DISCRIMINATION IN VIOLATION OF THE AFFORDABLE CARE ACT

[42 U.S.C. § 18116]

205. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

206. The Patient Protection and Affordable Care Act's ("ACA") Section 1557 (codified at 42 U.S.C. § 18116) reflects a renewed commitment by Congress to combat health discrimination by any health program or activity that receives federal funding. This landmark civil rights provision makes it illegal to discriminate against people because of their race, color, national origin, gender (this includes discrimination based on gender identity or the failure to conform to sex stereotypes), age, or disability in most health care settings. Title VI of the Civil Rights Act of 1964 and its regulations require recipients of federal funding to comply with nondiscrimination requirements based on race, color, or national origin. Section 1557 has a broad scope and applies to a wide range of health programs and entities. It protects individuals from discrimination in: any health program or activity of a recipient of federal financial assistance, such as hospitals, clinics, employers, retail community pharmacies or insurance companies that receive federal money. Section 1557 specifically extends its discrimination prohibition to entities that receive federal financial assistance in the form of contracts of insurance, credits, or subsidies, as well as any program or activity administered by an executive agency, including federal health programs like Medicare, Medicaid, and CHIP.

207. Under 42 U.S.C. § 1396r-8(k)(10)), "Retail Community Pharmacy" means an independent pharmacy, a chain pharmacy, a supermarket pharmacy, or a mass merchandiser pharmacy that is licensed as a pharmacy by the State and that dispenses medications to the general public at retail prices.

208. 42 U.S.C. § 18116, ADA Section 1557, provides as follow:

(a) . . . an individual shall not, on the ground prohibited under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) . . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency or any entity established under this title (or amendments). The enforcement mechanisms provided for and available under such title VI, title IX, section 504, or such Age Discrimination Act shall apply for purposes of violations of this subsection.

(b) Continued Application Of Laws.—Nothing in this title . . . shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals aggrieved under title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) . . . or to supersede State laws that provide additional protections against discrimination on any basis described in subsection (a).

ACA § 1557, 42 U.S.C. § 18116 (2011)

209. Title VI applies to all programs receiving Federal financial assistance, including private entities. Congress has defined covered programs to include “an entire corporation . . . if assistance is extended to such corporation . . . or which is principally engaged in the business of providing . . . health care” 42 U.S.C. § 2000d-4a (2006). A program also includes “[t]he entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship.” 45 C.F.R. § 80.13(g) (2010).

210. Programs and recipients of Federal financial assistance are particularly prohibited from providing “any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program.” See 45 C.F.R. § 80.3(a)(ii) (2010). Federal financial assistance has been interpreted and enforced to cover a broad range of programs receiving federal funds.

211. The courts have found that health care services providers currently covered by Title VI include retail community pharmacies as operated by the CVS Defendants that accept

1 Federal financial assistance through Medicare Part A, Part D, or Medicaid payments. *See*
 2 *Bowen v. American Hospital Assn.*, 476 U.S. 610, 624 (1986) (affirming hospital was recipient
 3 of “financial assistance” through its participation in the Medicare and Medicaid programs); see
 4 also *Fobbs v. Holy Cross Health Sys. Corp.*, 29 F. 3d 1439, 1447 (9th Cir. 1994); *U.S. v. Harris*
 5 *Methodist Ft. Worth*, 970 F. 2d 94, 1447 (5th Cir. 1992) (finding that the anti-discrimination
 6 provisions of Title VI apply to hospital receiving federal funds); *Rackley v Bd. of Trustees*, 238
 7 F Supp 512 (D.C. 1965) (state or private hospitals receiving federal funds bound by Title VI).

9 212. Financial assistance does not have to result in financial gain or increment in
 10 assets to be considered covered by Title VI. *See Bob Jones Univ. v. Johnson*, 396 F. Supp.
 11 597 (DC 1974), *aff’d* without op., 539 F.2d 514 (4th Cir. 1975).

12 213. The United States Supreme Court has explicitly recognized the relevant
 13 language in § 1557 as creating a private right of action when used in other civil rights statutes.
 14 *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283-84 (2002) (“Title VI of the Civil Rights Act of 1964
 15 and Title IX of the Education Amendments of 1972 create individual rights because those
 16 statutes are phrased ‘with an unmistakable focus on the benefited class.’” (citations omitted)).
 17 Compare § 1557 text (PPACA § 1557, 42 U.S.C. § 18116 (2011)), with Title VI and Title IX
 18 text (Congress used Title VI as the model in drafting § 1557’s other listed statutes). *See* 42
 19 U.S.C. § 2000d (2011) (“No person in the United States shall, on the ground of race, color, or
 20 national origin, be excluded from participation in, be denied the benefits of, or be subjected to
 21 discrimination under any program or activity receiving Federal financial assistance.”). Title IX
 22 and the Age Discrimination Act substitute their own protected classes with otherwise identical
 23 language. Section 504 uses the same text with a few modifications for the disability context:
 24 “No otherwise qualified individual with a disability in the United States ...shall, solely by
 25
 26
 27

1 reason of her or his disability, be excluded from the participation in, be denied the benefits of,
2 or be subjected to discrimination.” 29 U.S.C. § 794(a) (2011).

3 214. When Congress has referred to prior civil rights statutes in bill text, courts have
4 both inferred a private right of action and made available a previously implied private right of
5 action under the new statute. *See, e.g., Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (finding
6 that both the Americans with Disabilities Act and § 504 have private rights of action by virtue
7 of statutory allusions to Title VI).

8 215. By cross-referencing these statutes and thus incorporating their enforcement
9 mechanisms, Congress intended for the text itself to give rise to this right of action. *See Three*
10 *Rivers Ctr. v. Housing Authority*, 382 F3d 412, 426 ("Although the remedy available to persons
11 aggrieved by violations of the ... Act ... is at root an implied one, the statute, by cross-
12 referencing Title VI, which already had been interpreted as creating a private right of action,
13 arguably contains an explicit provision creating a private right of action." (citations omitted)).

14 216. By including Title IX among the statutes whose protected classes are also
15 covered by § 1557, Congress also made discrimination on the basis of gender actionable
16 against a variety of entities in health care.

17 217. CALLUM avers the Defendants meet the qualifications for being a “health
18 program or activity, any part of which is receiving Federal financial assistance” under Section
19 1557(a).

20 218. CALLUM avers the Defendants have violated and continue to violate Section
21 1557(a) of the Affordable Care Act by intentionally causing CALLUM to “be excluded from
22 participation in, be denied the benefits or, or be subjected to discrimination under any health
23 program or activity, any part of which is receiving Federal financial assistance” based on
24 disability, race and gender, which are all prohibited grounds of discrimination under Title IX.

219. CALLUM has been aggrieved by this violation of Section 1557(a) in the denial of access to necessary medical care and/or services including, though not limited to, prescription pharmaceuticals.

220. Declaratory and injunctive relief is required to define CALLUM's rights under Section 1557(a), to remedy the Defendants' violation of Section 1557(a), and to secure ongoing compliance with the antidiscrimination provisions of the Affordable Care Act.

221. CALLUM has been harmed as a result of Defendants' conduct and is entitled to compensatory damages.

222. CALLUM prays for judgment and relief as set forth herein.

SEVENTH CAUSE OF ACTION

ASSAULT

223. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

224. “An assault is an attempt or offer, with force or violence, to inflict bodily harm on another or engage in some offensive conduct. “[A]n assault occurs when a person has been placed in reasonable fear of bodily harm by the conduct of the defendant.” The elements of assault are: (1) conduct of the defendant which places the plaintiff, (2) in reasonable fear of bodily harm. The conduct must be of such nature and made under such circumstances as to affect the mind of a person of ordinary reason and firmness, so as to influence his conduct; or it must appear the person against whom the threat is made was peculiarly susceptible to fear, and the person making the threat knew and took advantage of the fact he could not stand as much as an ordinary person. *Mellen v. Lane*, 377 S.C. 261, 276 (2008)(citations omitted).

225. The Defendants may be held liable for anything which appears to have been a natural and probable consequence of their actions. *Id.*, at 279.

1 226. At least one or more Defendants intended to cause and did cause CALLUM to
2 suffer apprehension of an immediate harmful contact.

3 227. CALLUM did not consent to any Defendant's act(s).

4 228. As a direct and proximate result of Defendants' conduct CALLUM suffered
5 physical, mental and emotional injuries as described herein, including though not limited to
6 mental anguish and physical pain.

7 229. These injuries have caused CALLUM to suffer general damages in an amount to
8 be determined by proof at trial.

9 230. As a direct and proximate result of Defendants' conduct, CALLUM was
10 required to obtain medical services and treatment in an amount to be determined by proof at
11 trial and will, in the future, be compelled to incur additional obligations for medical and mental
12 health treatment in an amount to be determined by proof at trial.

13 231. Injury resulting from an assault by an employee or manager at the workplace
14 and involving the performance of the employer's business is an injury arising out of and in the
15 course of employment.

16 232. PENDERGRASS and at least one or more of the JOHN DOE and JANE DOE
17 defendants are liable to CALLUM for assault based on their actions as alleged herein
18 including, though not limited to, PENDERGRASS' reaching to remove the sports towel worn
19 by CALLUM.

20 233. Under the doctrine of respondeat superior, Defendants CVS CAREMARK
21 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, and/or CVS
22 PHARMACY, INC., and/or the CVS/pharmacy employer of PENDERGRASS is liable to
23 CALLUM for actual and punitive damages given PENDERGRASS' assault upon CALLUM as
24 aforesaid

1 234. CALLUM prays for judgment and relief as set forth herein.

2 **EIGHTH CAUSE OF ACTION**

3 **BATTERY**

4 235. Plaintiff hereby incorporates by reference each of the allegations set forth in the
5 preceding paragraphs as if realleged fully herein.

6 236. “A battery is the actual infliction of any unlawful, unauthorized violence on the
7 person of another, irrespective of its degree; it is unnecessary that the contact be by a blow, as
8 any forcible contact is sufficient. Generally speaking, a battery is the unlawful touching or
9 striking of another by the aggressor himself or by any substance put in motion by him, done
10 with the intention of bringing about a harmful or offensive contact which is not legally
11 consented to by the other, and not otherwise privileged. It is sometimes defined as any injury
12 done to the person of another in a rude, insolent, or revengeful way. Physical injury is not an
13 element of battery. While there must be a touching, any forcible contact, irrespective of its
14 degree, will suffice.” *Mellen v. Lane*, 377 S.C. at 277 (*citations omitted*).

15 237. The Defendants may be held liable for anything which appears to have been a
16 natural and probable consequence of their actions. *Id.*, at 279.

17 238. PENDERGRASS and at least one or more of the JOHN DOE and JANE DOE
18 defendants are liable to CALLUM for battery based on their actions as alleged herein
19 including, though not limited to, PENDERGRASS’ grabbing and shaking CALLUM by the
20 shoulder, and by the JOHN DOE unidentified white male driver of the gray truck when he
21 physically touched CALLUM’s face.

22 239. At least one or more Defendants intended to cause and did cause CALLUM to
23 suffer an immediate harmful contact.

24 240. CALLUM did not consent to any Defendant’s act(s).

1 241. As a direct and proximate result of Defendants' conduct CALLUM suffered
2 physical, mental and emotional injuries as described herein, including though not limited to
3 mental anguish and physical pain.

4 242. These injuries have caused CALLUM to suffer general damages in an amount to
5 be determined by proof at trial.

6 243. As a direct and proximate result of Defendants' conduct, CALLUM was
7 required to obtain medical services and treatment in an amount to be determined by proof at
8 trial and will, in the future, be compelled to incur additional obligations for medical and mental
9 health treatment in an amount to be determined by proof at trial.

10 244. Injury resulting from a battery by an employee or manager at the workplace and
11 involving the performance of the employer's business is an injury arising out of and in the
12 course of employment.

13 245. Under the doctrine of respondeat superior, Defendants CVS CAREMARK
14 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, and/or CVS
15 PHARMACY, INC., and/or the CVS/pharmacy employer of PENDERGRASS is liable to
16 CALLUM for actual and punitive damages given PENDERGRASS' battery upon CALLUM as
17 aforesaid.

18 246. CALLUM prays for judgment and relief as set forth herein.

19
20
21 **NINTH CAUSE OF ACTION**

22 **FALSE IMPRISONMENT**

23 247. Plaintiff hereby incorporates by reference each of the allegations set forth in the
24 preceding paragraphs as if realleged fully herein.

25 248. The facts set forth above demonstrate that Plaintiff CALLUM was unlawfully
26 restrained by PENDERGRASS in CALLUM's vehicle.

1 249. By her actions, PENDERGRASS confined CALLUM in his vehicle and
2 demonstrated aggression when CALLUM attempted to leave, forcing CALLUM to submit to
3 the apprehension of PENDERGRASS' force.

4 250. Defendants' violated CALLUM's personal liberty by acting in a manner which
5 had the effect of confining CALLUM against CALLUM's will. Defendants' accomplished this
6 restraint through express and implied threats of physical force and by acting in a manner which
7 had the effect of threatening harm to CALLUM. CALLUM's false imprisonment ended when
8 he was able to close the door to his vehicle and flee the scene of the altercation and hostilities
9 inflicted on or against him by PENDERGRASS and the JOHN DOE and JANE DOE
10 unidentified defendants who conspired to "toughen (CALLUM) up."

11 251. As a proximate result of the conduct as alleged herein, CALLUM has suffered
12 and continues to suffer bodily injury, extreme mental distress, humiliation and anguish, and
13 other emotional and physical injuries, as well as economic losses, all to CALLUM's damage in
14 amounts to be proven at trial.
15

16 252. As a direct and proximate result of Defendants' conduct, CALLUM was
17 required to obtain medical services and treatment in an amount to be determined by proof at
18 trial and will, in the future, be compelled to incur additional obligations for medical and mental
19 health treatment in an amount to be determined by proof at trial.
20

21 253. Defendants committed the acts alleged herein maliciously, oppressively, with
22 the wrongful intention of injuring CALLUM from an improper and evil motive, amounting to
23 malice, and in conscious disregard of CALLUM's rights. CALLUM thus is entitled to recover
24 punitive damages from Defendants in amounts to be proven at trial.
25
26
27

1 254. Injury resulting from false imprisonment by an employee or manager at the
2 workplace and involving the performance of the employer's business is an injury arising out of
3 and in the course of employment.

4 255. PENDERGRASS and at least some of the JOHN DOE and JANE DOE
5 defendants are liable to CALLUM for false imprisonment.

6 256. At the time of the incidents described above, PENDERGRASS was an
7 agent/servant of CVS, acting within the scope of her employment.

8 257. Under the doctrine of respondeat superior, Defendants CVS CAREMARK
9 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, and/or CVS
10 PHARMACY, INC., and/or the CVS/pharmacy employer of PENDERGRASS is liable to
11 CALLUM for actual and punitive damages given PENDERGRASS' and others' false
12 imprisonment of CALLUM as aforesaid.

13 258. As a direct and proximate result of PENDERGRASS' unlawful retention of
14 Plaintiff, CALLUM is entitled to recover damages.

15 259. CALLUM prays for judgment and relief as set forth herein.

16
17
18 **TENTH CAUSE OF ACTION**

19 **INTENTIONAL INFLICTION of EMOTIONAL DISTRESS (OUTRAGE)**

20 260. Plaintiff hereby incorporates by reference each of the allegations set forth in the
21 preceding paragraphs as if realleged fully herein.

22 261. South Carolina courts have held that, in order to recover for the intentional
23 infliction of emotional distress, "a plaintiff must establish that (1) the defendant intentionally or
24 recklessly inflicted severe emotional distress or was certain or substantially certain that such
25 distress would result from his conduct (2) the conduct was so 'extreme and outrageous' as to
26 exceed 'all possible bounds of decency' and must be regarded as 'atrocious, and utterly
27

1 intolerable in a civilized community;' (3) the actions of the defendant caused the plaintiff's
2 emotional distress; and (4) the emotional distress suffered by the plaintiff was 'severe' so that
3 'no reasonable man could be expected to endure it.' Although 'severe' emotional distress is
4 usually manifested by 'shock, illness or other bodily harm,' such objective symptomatology is
5 not an absolute prerequisite for recovery of damages for intentional . . . infliction of emotional
6 distress." *Ford v. Hutson*, 276 S.C. 157; 276 S.E.2d 776 (1981).

7
8 262. Discrimination against disabled minorities is anathema in South Carolina and
9 throughout the United States, and is unusually damaging and degrading to the dignity of all
10 Americans, especially those discriminated against, and especially when the discrimination is
11 against a Marine veteran of African-American descent suffering from service-connected
12 disabilities. A disabled veteran of any branch of the U.S. Military who suffers from PTSD and
13 PTSD-related symptoms is more vulnerable and helpless than other less-disabled persons, and
14 the discrimination here has been unusually destructive of Plaintiff's life, causing him grave
15 damage. Given the sad history of discrimination throughout South Carolina and the United
16 States, any discrimination now is by its very nature abhorrent and outrageous, and is conduct
17 that is intolerable and far beyond what is considered acceptable or decent in our society.

18
19 263. In commission of the acts alleged in this Complaint, Defendants have:

- 20 a. Denied access to a disabled minority person to their public accommodation;
21 b. Subjected CALLUM to unequal discriminatory treatment on account of his
22 minority, disability, and gender status, in violation of the Civil Rights Act of
23 1964, the Americans with Disabilities Act of 1990, and the Patient Protection
24 and Affordable Care Act of 2010;

1 c. Refused to provide Plaintiff reasonable accommodation, advantages, facilities,
2 privileges and/or services in Defendants' CVS/pharmacy retail community
3 pharmacies;

4 d. Misled CALLUM by telling him there was never any way a CVS/pharmacy
5 would ever accommodate him and/or his disability.
6

7 264. Defendants have imposed eligibility criteria that screen out or tend to screen out
8 a male African-American Marine veteran with service-connected disabilities from fully and
9 equally enjoying any goods, services, facilities, privileged, advantages, or accommodations,
10 and such criteria cannot be shown to be necessary for the provision of the goods, services,
11 facilities, privileged, advantages, or accommodation being offered.

12 265. Defendants, by and through their employees or agents, engaged in the
13 shockingly outrageous conduct alleged herein intentionally and maliciously for the purpose of
14 causing CALLUM to suffer humiliation, mental anguish, apprehension, and emotional distress.
15

16 266. Defendants' conduct is the type that cannot be tolerated in a civilized society.
17 Defendants used and/or ratified highly offensive and derogatory racial epithets directed
18 specifically towards or at CALLUM, often within eyesight and hearing of those around him.
19 The racial epithets were shared with others, including other employees, who joined in on the
20 oppression.

21 267. Defendants' conduct was outrageous and in reckless disregard for CALLUM's
22 feelings, dignity, and/or fundamental rights as a human being.

23 268. When CALLUM attempted to patronize the various CVS/pharmacy retail
24 community pharmacy establishments, CALLUM believed that he was welcome because of
25 CVS' "signature hospitality." The Defendants' and their agents knew their conduct was
26 outrageous, extreme, and hurtful.
27

1 269. Defendants have failed to take such steps as may be necessary to ensure that no
2 individual of a protected racial or gender status with a disability is excluded, denied services,
3 segregated or otherwise treated different than other individuals of a different race or gender or
4 who have served, in any capacity, with any branch of the U.S. Military, unless the entity can
5 demonstrate that taking such steps would fundamentally alter the nature of the good, service,
6 facility, privilege, advantage, or accommodation being offered or would result in an undue
7 burden.
8

9 270. Defendants' actions, policies, practices and procedures as alleged herein are
10 such that they shock the conscience and have no place in our society, and should be met with
11 the full force of law, including punitive damages, as a deterrent to Defendants and other
12 providers of public accommodations from engaging in these unlawful, malicious, oppressive
13 and fraudulent activities.

14 271. Defendants' unlawful, malicious, oppressive and fraudulent activities include
15 acts as alleged herein, which are outright acts of discrimination against disabled African-
16 American male persons when substantially similar persons who are not minorities are
17 welcomed and not turned away, and were acts committed because Defendants considered
18 Plaintiff CALLUM inferior and not wanted as a customer in Defendants' retail community
19 pharmacies.
20

21 272. As a direct and proximate result of the acts and omissions, as alleged herein,
22 Plaintiff CALLUM suffered severe emotional distress and physical injuries that will be proven
23 at the time of trial.

24 273. As a direct and proximate result of Defendants' conduct, CALLUM was
25 required to obtain medical services and treatment in an amount to be determined by proof at
26
27

1 trial and will, in the future, be compelled to incur additional obligations for medical and mental
2 health treatment in an amount to be determined by proof at trial

3 274. Injury resulting from intentional infliction of emotional distress by an employee
4 or manager at the workplace and involving the performance of the employer's business is an
5 injury arising out of and in the course of employment.

6 275. CALLUM alleges that no fewer Defendants than KEELER, PENDERGRASS
7 and at least some of the JOHN DOE and JANE DOE defendants are liable to CALLUM for
8 intentional infliction of emotional distress.

9 276. Under the doctrine of respondeat superior, Defendants CVS CAREMARK
10 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, and/or CVS
11 PHARMACY, INC., and/or the CVS/pharmacy employer of KEELER and PENDERGRASS
12 and those JANE DOE and/or JOHN DOE Defendants involved is or are liable to CALLUM for
13 actual and punitive damages given KEELER's and PENDERGRASS', and possibly others',
14 intentional infliction of emotional distress upon CALLUM as aforesaid.

15 277. CALLUM prays for judgment and relief as set forth herein.

16 **ELEVENTH CAUSE OF ACTION**

17 **CIVIL CONSPIRACY**

18 278. Plaintiff hereby incorporates by reference each of the allegations set forth in the
19 preceding paragraphs as if realleged fully herein.

20 279. The elements of a civil conspiracy in South Carolina are (1) the combination of
21 two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special
22 damages. *LaMotte v. Punch Line of Columbia*, 296 S.C. 66 (1988); *Cowburn v. Leventis*, 366
23 S.C. 20, 49 (Ct. App. 2005); *Ellis v. Davidson*, 358 S.C. 509 (Ct. App. 2004); see also *Peoples*
24 *Federal Savings & Loan Ass'n of S. Carolina v. Resources Planning Corp.*, 358 S.C. 460, 470
25

(2004) (“A civil conspiracy is a combination of two or more parties joined for the purpose of injuring the plaintiff and thereby causing special damage.”) (*citation omitted*). The “essential consideration” in civil conspiracy “is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff.” *Lee v. Chesterfield General Hosp.*, 289 S.C. 6, 13 (Ct. App. 1986).

280. “In order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise.” *Island Car Wash v. Norris*, 292 S.C. 595, 601 (Ct. App. 1987); accord *Cowburn*, 366 S.C. at 49. South Carolina Courts have observed: Conspiracy may be inferred from the very nature of the acts done, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. *Island Car Wash v. Norris*, 292 S.C. 595, (Ct. App. 1987). “Civil conspiracy is an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. . . .” *Id.* at 601.

281. “The agents of a corporation are legally capable, as individuals, of conspiracy among themselves or with third parties.” *Lee v. Chesterfield General Hosp.*, 289 S.C. at 14.

282. “An act is within the scope of a servant's employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business.” *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276 (2006).

283. “Because civil conspiracy is 'by its very nature covert and clandestine,' it is usually not provable by direct evidence.” *Moore v. Weinberg*, 373 S.C. 209, 228 (Ct. App. 2007) (quoting *Island Car Wash v. Norris*, 292 S.C. 595, 601 (Ct. App. 1987)).

284. CALLUM avers that, on information and belief, the Defendants within each district and/or region entered into an agreement and/or understanding and otherwise conspired

1 with other named and yet unnamed Defendants to tortiously interfere with CALLUM's rights
2 under federal law.

3 285. In furtherance of the conspiracy, multiple CVS/pharmacy personnel admitted to
4 CALLUM that CALLUM would never receive any accommodation at or by a CVS/pharmacy
5 anywhere within the State of South Carolina.

6 286. CALLUM avers that, upon information and belief, Defendants combined and
7 conspired wrongfully to discriminate against CALLUM for the purpose of injuring CALLUM.
8

9 287. Upon information and belief, Defendants combined and conspired wrongfully to
10 inflict emotional distress upon CALLUM for the purpose of injuring CALLUM.

11 288. As a direct and proximate result of Defendants' tortious acts committed in
12 furtherance of the above-referenced conspiracy, CALLUM has suffered actual damages and is
13 entitled to the relief sought herein.

14 289. As a direct and proximate result of Defendants' conduct, CALLUM was
15 required to obtain medical services and treatment in an amount to be determined by proof at
16 trial and will, in the future, be compelled to incur additional obligations for medical and mental
17 health treatment in an amount to be determined by proof at trial

18 290. CALLUM avers Defendants are liable to CALLUM for actual and punitive
19 damages given their civil conspiracy.
20

21 291. Under the doctrine of respondeat superior, Defendants CVS CAREMARK
22 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, CVS PHARMACY,
23 INC., and/or the CVS/pharmacy employer of the conspiring Defendants and those JANE DOE
24 and/or JOHN DOE Defendants involved is or are liable to CALLUM for actual and punitive
25 damages given their employees', and possibly others', infliction of damages upon CALLUM as
26 aforesaid.
27

1 292. CALLUM prays for judgment and relief as set forth herein.

2 **TWELFTH CAUSE OF ACTION**

3 **NEGLIGENCE**

4 293. Plaintiff hereby incorporates by reference each of the allegations set forth in the
5 preceding paragraphs as if realleged fully herein.

6 294. In choosing to operate retail community pharmacies open to the public,
7 Defendants undertook the duty to exercise reasonable care to operate and maintain the safety of
8 the public who shopped in Defendants' CVS/pharmacy retail community pharmacies.

9 295. A cause of action for negligence requires CALLUM establish (1) the CVS
10 Defendants owed a duty of care to CALLUM; (2) at least one or more of the CVS Defendants'
11 breached that duty by a negligent act or omission; and (3) the CVS Defendants' breach was the
12 actual and proximate cause of CALLUM's injury(ies); and (4) CALLUM suffered an injury or
13 damages resulting from the CVS Defendants' breach. *See, e.g., Bullard v. Ehrhardt*, 283 S.C.
14 557 (1984); *Winburn v. Insurance Co. of North America*, 287 S.C. 435 (Ct.App.1985).

15 296. "The owner of property owes to an invitee or business visitor the duty of
16 exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the
17 breach of such duty." *Sims v. Giles*, 343 S.C. 708, 718 (Ct. App. 2001). Furthermore, "[t]he
18 landowner has a duty to warn an invitee only of latent or hidden dangers of "which the
19 landowner has knowledge or should have knowledge."

20 297. South Carolina recognizes four general classifications of persons who come on
21 premises." *Id.*, at 715. The classifications are: "adult trespassers, invitees, licensees, and
22 children." *Id.* Importantly, "different standards of care apply depending on whether the visitor
23 is considered an "invitee," i.e., an invited (express or implied) business guest; a "licensee," i.e.,
24 a person not invited, but whose presence is suffered; a "trespasser," i.e., a person whose
25
26
27

1 presence is neither invited nor suffered; or a child.” In these liability cases, “the invitee is
2 offered the utmost duty of care.”

3 298. South Carolina courts classify Plaintiff CALLUM as a business visitor, giving
4 him invitee status. “An invitee is a person who enters onto the property of another at the
5 express or implied invitation of the property owner.” *Sims v. Giles*, 343 S.C. at 716. “Invitees
6 are limited to those persons who enter or remain on land upon an invitation which carries with
7 it an implied representation, assurance, or understanding that reasonable care has been used to
8 prepare the premises, and make them safe for their reception.” *Id.*, at 716. “The visitor is
9 considered an invitee especially when he is upon a matter of mutual interest or advantage to the
10 property owner.” That is, “a person is an invitee on the land of another if he enters by express
11 or implied invitation and his entry is connected with the owner's business.” *Id.* This means that
12 “a business visitor is an invitee whose purpose for being on the property is directly or indirectly
13 connected with business dealings with the owner,” and generally includes shoppers visiting
14 Defendants’ retail community pharmacies.

15
16 299. “The doctrine of respondeat superior provides that the employer, as the
17 employee's master, is called to answer for the tortious acts of his servant, the employee, when
18 those acts occur in the course and scope of the employee's employment.” *James v. Kelly*
19 *Trucking*, 377 SC. 628, 631 (2008)(citing *Sams v. Arthur*, 135 So. 123, 128-131 (1926)). “Such
20 liability is not predicated on the negligence of the employer, but upon the acts of the employee,
21 whether those acts occurred while the employee was going about the employer's business, and
22 the agency principles that characterize the employer-employee relationship.” *Id.* “Just as an
23 employee can act to cause another's injury in a tortious manner, so can an employer be
24 independently liable in tort. *Id.* Such liability is not predicated on the negligence of the
25 employer, but upon the acts of the employee, whether those acts occurred while the employee
26
27

1 was going about the employer's business, and the agency principles that characterize the
2 employer-employee relationship. *Id.*; see also *Clark v. South Carolina Dep't of Pub. Safety*,
3 362 S.C. 377 (2005) (upholding verdict on claim of negligent supervision where there was
4 evidence of employer's gross negligence despite jury's failure to find employee's breach of a
5 duty); *Clark v. Cantrell*, 339 S.C. 369, 378 (2000) (purposes of punitive damages are to punish
6 wrongdoer and deter similar reckless, willful, wanton, or malicious conduct in the future).

7
8 300. At all times as alleged herein, the individual defendants were acting both
9 individually and within the course and scope of their employment with CVS.

10 301. Under the doctrine of respondeat superior, CVS is liable in actual and punitive
11 damages to CALLUM for its employees', agents', and representatives' negligence,
12 recklessness, gross negligence, willfulness, and wantonness as aforesaid.

13 302. CALLUM avers the Defendants were negligent, reckless, grossly negligent,
14 willful, and wanton, and malicious, and breach their duty with respect to CALLUM by:

- 15 a. Failing to exercise due care under the circumstances;
- 16 b. Failing to sufficiently monitor CALLUM's interaction with CVS/pharmacy
17 personnel;
- 18 c. Failing to properly train CVS/pharmacy staff to ensure the safety of
19 CALLUM;
- 20 d. Failing to institute and/or enforce adequate policy and procedure to protect
21 CALLUM from abuse by KEELER, PENDERGRASS and other JOHN
22 DOE and/or JANE DOE defendants;
- 23 e. Failing to protect CALLUM's rights to security and right to personal
24 liberty; and
25 f. Any other particulars which may be shown at trial.
26
27

1 303. As a direct and proximate result of the negligence, recklessness, gross
2 negligence, willfulness, and wantonness as aforesaid, CALLUM sustained injuries and
3 damages including, without limitation, embarrassment, humiliation, loss of his liberty, pain and
4 suffering, inconvenience, frustration, mental anguish, and attorney's fees.

5 304. Defendants are liable to CALLUM for actual and punitive damages given their
6 negligence, recklessness, gross negligence, willfulness, and wantonness.

7 305. Under the doctrine of respondeat superior, Defendants CVS CAREMARK
8 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, CVS PHARMACY,
9 INC., and/or the CVS/pharmacy employer of the named Defendants and those JANE DOE
10 and/or JOHN DOE Defendants involved is or are liable to CALLUM for actual and punitive
11 damages given their employees', and possibly others', infliction of damages upon CALLUM as
12 aforesaid.
13

14 306. CALLUM prays for judgment and relief as set forth herein.

15 **THIRTEENTH CAUSE OF ACTION**

16 **NEGLIGENT SUPERVISION and/or RETENTION**

17 307. Plaintiff hereby incorporates by reference each of the allegations set forth in the
18 preceding paragraphs as if realleged fully herein.
19

20 308. At the time CALLUM sought reasonable accommodation from CVS personnel,
21 each and every individual Defendant was acting both individually and within the course and
22 scope of his or her employment with CVS.

23 309. In choosing to operate CVS/pharmacy retail community pharmacies in South
24 Carolina, CVS undertook the duty to exercise reasonable care in hiring, retaining and
25 supervising presidents, vice presidents, regional directors, regional managers, district
26 managers, store managers, and all other employees, agents or representatives of CVS.
27

1 310. South Carolina recognizes the torts of negligent supervision and negligent
2 retention, independent of allegations of negligent supervision. *See Degenhart v. Knights of*
3 *Columbus*, 309 S.C. 114, 116-17 (1992) (recognizing the tort of negligent supervision in South
4 Carolina law); *Moore by Moore v. Berkeley County School Dist.*, 326 S.C. 584, 590 (Ct. App.
5 1997) (examining negligent supervision case law since *Degenhart*). South Carolina, indeed,
6 recognizes the tort of negligent retention in the context of a negligent supervision action.
7

8 311. In circumstances where an employer knew or should have known that its
9 employment of a specific person created an undue risk of harm to the public, a plaintiff may
10 claim that the employer was itself negligent in hiring, supervising, or training the employee, or
11 that the employer acted negligently in entrusting its employee with a tool that created an
12 unreasonable risk of harm to the public.” *James v. Kelly Trucking*, 377 SC. at 631.

13 312. South Carolina state courts apply the principles of *Degenhart* to claims of
14 negligent supervision. An employer may be liable for negligent supervision if the employee
15 intentionally harms another when the employee: (1) is upon the premises of the employer, or is
16 using a chattel of the employer, (2) the employer knows or has reason to know that he has the
17 ability to control his employee, and (3) the employer knows or should know of the necessity
18 and opportunity for exercising such control. *Degenhart v. Knights of Columbus*, 309 S.C. at
19 115-17.
20

21 313. While the standard according to the Restatement section 317 comment c, is
22 whether the employer knew the offending employee was “in the habit of misconducting
23 [himself] in a manner dangerous to others,” South Carolina courts do not view the “habit of
24 misconducting” language in the Restatement as mandating multiple prior acts of misconduct
25 for a negligent retention action to remain viable in South Carolina. Instead, South Carolina
26 courts hold that a single isolated incident of prior misconduct (of which the employer knew or
27

1 should have known) may support a negligent retention claim, provided the prior misconduct
2 has a sufficient nexus to the ultimate harm. *Doe v. ATC, Inc.*, 367 S.C. 199, 207 (2005).

3 314. Accordingly, many courts have recognized that a plaintiff must demonstrate
4 some propensity, proclivity, or course of conduct sufficient to put the employer on notice of the
5 possible danger to third parties.

6 315. The doctrine of respondeat superior provides that the employer, as the
7 employee's master, is called to answer for the tortious acts of his servant, the employee, when
8 those acts occur in the course and scope of the employee's employment. Such liability is not
9 predicated on the negligence of the employer, but upon the acts of the employee, whether those
10 acts occurred while the employee was going about the employer's business, and the agency
11 principles that characterize the employer-employee relationship. *See James v. Kelly Trucking*,
12 377 S.C. at 631; *see Clark v. South Carolina Dep't of Pub. Safety*, 362 S.C. 377, 608 S.E.2d
13 573 (2005) (upholding verdict on claim of negligent supervision where there was evidence of
14 employer's gross negligence despite jury's failure to find employee's breach of a duty); *Clark*
15 *v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000) (purposes of punitive damages are
16 to punish wrongdoer and deter similar reckless, willful, wanton, or malicious conduct in the
17 future).

18 316. Each Defendant had the authority to supervise, prohibit, control, and/or regulate
19 the other Defendants so as to prevent these acts and omissions from occurring.

20 317. CALLUM avers the CVS Defendants acted negligently, recklessly, grossly
21 negligent, maliciously, willfully, and wantonly, and breached this duty with respect to
22 CALLUM by:

23 a. Failing to exercise due care under the circumstances;

- 1 b. Failing to provide adequate supervision its employees – primarily those with
2 whom CALLUM interacted and those who promulgated and/or otherwise
3 determined “CVS policy” cited by the various Defendants as alleged herein
4 – properly;
5 c. Creating an environment in which CVS employees, agents, and/or
6 representatives were permitted to prey on the vulnerability of Marine
7 veterans who suffering from service-connected PTSD and other disabilities;
8 d. Mishandling its interactions with CALLUM with respect to the events of
9 alleged herein; and
10 e. Any other particulars which may be shown at trial.

12 318. CALLUM avers that each Defendant knew or reasonably should have known
13 that unless they intervened to protect CALLUM and properly supervise, prohibit, control
14 and/or regulate the conduct of the other Defendants, those Defendants would perceive their acts
15 and omissions as being ratified and condoned.

16 319. CALLUM avers that each Defendant failed to exercise due care by failing to
17 supervise, prohibit, control, or regulate the remaining Defendants and/or by failing to protect
18 CALLUM. As a direct and proximate result of the negligence, recklessness, gross negligence,
19 willfulness, and wantonness as aforesaid, Plaintiff CALLUM has suffered and continued to
20 suffer injuries and damages including, without limitation, embarrassment, humiliation, loss of
21 his liberty, pain and suffering, inconvenience, frustration, mental anguish, and attorney’s fees,
22 all in an amount to be determined at trial.

24 320. Each Defendant failed to exercise due care by failing to supervise, prohibit,
25 control, or regulate the remaining Defendants and/or by failing to protect CALLUM.

321. Defendants are liable to CALLUM for actual and punitive damages given their negligence, recklessness, gross negligence, willfulness, and wantonness.

322. Under the doctrine of respondeat superior, Defendants CVS CAREMARK CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, CVS PHARMACY, INC., and/or the CVS/pharmacy employer of the named Defendants and those JANE DOE and/or JOHN DOE Defendants involved is or are liable to CALLUM for actual and punitive damages given their employees', and possibly others', infliction of damages upon CALLUM as aforesaid.

323. CALLUM prays for judgment and relief as set forth herein.

FOURTEENTH CAUSE OF ACTION

INTERFERENCE WITH CONTRACT and/or

PROSPECTIVE CONTRACTUAL RELATIONS

324. Plaintiff hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

325. The elements of the cause of action are (1) the intentional interference with the plaintiff's potential contractual relations, (2) for an improper purpose or by improper methods, and (3) causing injury to the plaintiff. *Brown v. Stewart*, 348 S.C. 33, 55 (Ct.App.2001); *Love v. Gamble*, 316 S.C. 203, 214 (Ct.App.1994); *Collins Music Co. v. Terry*, 400 S.E.2d 783 (S.C. Ct. App. 1991). As an alternative to establishing an improper purpose, CALLUM may prove the Defendants' method of interference was improper under the circumstances. *Crandall Corp. v. Navistar Int'l Transp. Corp.*, 302 S.C. 265, 266 (1990).

326. Prior to the incidents as alleged herein, CALLUM had, either directly or through his family member or members acting as agent(s) on his behalf, previously purchased medical

1 and health care equipment, supplements and/or supplies, as well has had prescriptions for
2 pharmaceuticals filled at or by one or more CVS/pharmacy retail community pharmacy(ies).

3 327. CALLUM informed multiple Defendants that CALLUM needed to have new
4 prescriptions for pharmaceuticals filled and that he desired to purchase other items available at
5 each of the CVS/pharmacy retail community pharmacy locations.

6 328. CALLUM had a reasonable expectation of entering into mutually advantageous
7 business relations with the Defendants, about which the Defendants knew or should have
8 known that CALLUM intended to contract. CALLUM maintains this cause of action for
9 intentional interference with prospective contractual relations due to the loss of an identifiable
10 contractual expectation. *See, e.g., Crandall Corp. v. Navistar Int'l Transp.*, 302 S.C. at 267-68
11 (alleged interference with a verbal parts and supply contract); *Love v. Gamble*, 316 S.C. at 205-
12 07 (alleged interference with pickle supply contract); *Williams v. Riedman*, 339 S.C. 251
13 (Ct.App.2000) (asserted as a counterclaim by employer in a wrongful termination case where
14 the former employee allegedly solicited the employer's current clients); *Edens & Avant Inv.*
15 *Props., Inc. v. Amerada Hess Corp.*, 318 S.C. 134 (Ct.App.1995) (alleging interference with an
16 option contract; nevertheless, the action was dismissed because the particular plaintiff had no
17 right to recover damages).

18 329. CALLUM avers that *Crandall* and other legal authority discussing this tort
19 usually require the aggrieved party to have been unsuccessful in acquiring an expected contract
20 due to a third party's (here, the individual Defendants) intentional and wrongful actions. *Egrets*
21 *Pointe Townhouses Prop. Owners Ass'n v. Fairfield Cmty's., Inc.*, 870 F.Supp. 110, 116 (1994).

22 330. CALLUM's reasonable expectation need not be based on an enforceable
23 contract. *United Educ. Distribs., LLC v. Educ. Testing Serv.*, 350 S.C. 7, 16 (2002)(citing
24 *Landry v. Hornstein*, 462 So.2d 844, 846 (Fla. Dist.Ct.App. 1985) for the holding that the
25
26
27

1 reasonable expectation need not be based on an enforceable contract if the jury finds that an
2 understanding between the parties would have been completed had a defendant not interfered.).

3 331. Defendants intentionally and with reckless disregard for the rights of Plaintiff
4 CALLUM prevented CALLUM from entering a prospective or potential contract with CVS for
5 medical and health care, supplies, supplements and/or prescription pharmaceuticals.

6 332. Under the doctrine of respondeat superior, Defendants CVS CAREMARK
7 CORPORATION and/or SOUTH CAROLINA CVS PHARMACY, LLC, CVS PHARMACY,
8 INC., and/or the CVS/pharmacy employer of the named Defendants and those JANE DOE
9 and/or JOHN DOE Defendants involved is or are liable to CALLUM for actual and punitive
10 damages given their employees', and possibly others', infliction of damages upon CALLUM as
11 aforesaid.
12

13 333. CALLUM prays for judgment and relief as set forth herein.

14 **FIFTEENTH CAUSE OF ACTION**

15 **UNFAIR TRADE PRACTICES**

16 334. Plaintiff hereby incorporates by reference each of the allegations set forth in the
17 preceding paragraphs as if realleged fully herein.
18

19 335. An action for damages may be brought under South Carolina's Unfair Trade
20 Practices Act (UTPA) for "unfair methods of competition and unfair or deceptive acts or
21 practices" in the conduct of trade or commerce. S.C. Code Ann. § 39-5-20(a) (2012). Unfair
22 trade practices are practices which are "offensive to public policy or which are immoral,
23 unethical, or oppressive." *Bahringer v. ADT Sec. Services*, 942 F. Supp. 2d 585, 593-4 (D. SC,
24 2013) (internal citations omitted). The words "trade" and "commerce" are synonymous, and
25 trade is defined as both the business of buying and selling. *Baker v. Chavis*, 410 S.E.2d 600,
26 603 (1991).
27

1 336. A business practice is unfair if it causes, or is likely to cause, substantial
2 consumer injury that a consumer could not reasonably avoid and that is not outweighed by any
3 countervailing benefits to consumers.

4 337. CALLUM avers that Defendants engaged in practices that are offensive to
5 public policy and unfair when Defendants discriminated against CALLUM in violation of the
6 laws of the United States and South Carolina.

7 338. The UTPA renders illegal any unfair act or practice in trade or commerce
8 affecting South Carolina.

9 339. Defendants' misrepresentations, false statements, purposeful disparagement, and
10 racially, disability, and/or gender motivated denials of CALLUM's engaging in commerce with
11 the CVS Defendants constitute unfair trade practices.

12 340. Defendants' unfair characterizations are capable of repetition and have been
13 committed on numerous occasions, thus the unfair acts and practices have a significant public
14 impact in South Carolina.

15 341. CALLUM avers that he suffered actual, ascertainable damages as a result of the
16 Defendants' use of the unfair trade practice.

17 342. CALLUM avers that the unlawful trade practices engaged in by the Defendants
18 have an adverse impact on the public interest. CALLUM further avers that the unfair practices
19 engaged in by the CVS Defendants have an impact upon the public interest due to the ability of
20 the CVS Defendants to repeat the same or similar actions taken against CALLUM not only
21 again upon CALLUM, but upon other disabled male African-American Marine veterans.
22 *Haley Nursery Co. v. Forrest*, 381 S.E.2d 906, 908 (S.C.1989); *Noack Enters. v. Country*
23 *Corner Interiors of Hilton Head Island*, 351 S.E.2d 347, 350-51 (S.C. 1986).

1 343. CALLUM avers that the allegations as raised herein provide sufficient
2 justification for this Court's finding that the unfair practices have occurred in the past and
3 therefore are likely to continue in the future absent deterrence, and that, based upon the
4 statements by several of the Defendants named herein, CVS' policies and procedures create a
5 potential for repetition of the unfair acts. *Wright v. Craft*, 640 S.E.2d 486, 502 (S.C. 2006).

6 344. While relief under the UTPA is "not available to redress a private wrong where
7 the public interest is unaffected," here, however, the public interest is directly at issue based
8 upon the allegations CALLUM raises in this Complaint. *Columbia E. Assoc. v. Bi-Lo, Inc.*,
9 386 S.E.2d 259, 263 (S.C.1989).

10 345. Corporate officers are subject to individual liability under the UTPA. For the
11 UTPA's purposes, a "person" is defined to include "natural persons, corporations, trusts,
12 partnerships, incorporated or unincorporated associations and any other legal entity." S.C.
13 Code Ann. § 39-5-10(a). This definition encompasses controlling persons in a corporation.
14 *State ex rel. McLeod v. C & L Corp., Inc.*, 313 S.E.2d 334 (S.C. 1984). A controlling person is
15 defined as "one who makes formulates and directs corporate policy or who is deeply involved
16 in the important affairs of the corporation." *Id.*, at 341. Under this definition, an upper echelon
17 officer, such as the C.E.O., or a secretary, is subject to individual liability under the UTPA. *See*
18 *State ex rel. Medlock v. Nest Egg Soc'y Today*, 384 S.E.2d 381 (S.C. 1986). Furthermore,
19 unlike common law, a principal can be held liable under the Act for the misrepresentations of
20 his agent regardless of whether the principal had actual knowledge. *State ex rel. McLeod v. C*
21 *& L Corp*, 313 S.E.2d at 339 (citation omitted)(holding that the UPTA "should not be
22 construed to increase the plaintiff's burden of proving liability. Its purpose is to give additional
23 protection to the victims of unfair trade practices, not to make a case harder to prove than it
24 would be under common law principles.").

1 346. Where the unfair act or practice was willful or knowing, this Court shall award
2 three times the actual damages sustained. S.C. Code Ann. § 39-5-140(a) (2012). Under the
3 UTPA, “willful” does not have the same meaning as in common law. “Willful” under the
4 UTPA is found where a party “should have known” that his or her conduct violates the UTPA.
5 *State ex rel. Medlock v. Nest Egg Soc’y Today*, 384 S.E.2d at 383. “The standard is not one of
6 actual knowledge, but of constructive knowledge. If, in the exercise of due diligence, persons
7 of ordinary prudence engaging in trade or commerce could have ascertained that their conduct
8 violates the Act, then such conduct is ‘willful’ within the meaning of the statute.” *Id.*

9
10 347. Additionally, interference with contractual relations also supports a UTPA
11 claim. Where the conduct in issue amounts to an intentional interference, and meets the UTPA
12 requirements of trade or commerce and public impact, CALLUM shall succeed on this cause of
13 action. *Camp v. Springs Mortgage Corp.*, 414 S.E.2d 784 (S.C. 1991).

14 348. CALLUM avers that Defendants engaged in unfair methods of competition and
15 unfair and unlawful deceptive acts or practices in the conduct of their business, said conduct
16 constituting a pattern or practice of unlawful conduct capable of repetition which has an
17 adverse impact on the public interest and is offensive to public policy, immoral, unethical and
18 oppressive.
19

20 349. As set forth in detail above, Defendants have engaged in unlawful, unfair or
21 fraudulent business practices in violation of the UTPA as well as acts of unfair competition in
22 violation of statutory and common law.

23 350. Defendants' unfair business practices affect public interest because, among other
24 things, they were committed in the course of Defendants' businesses, the activities were part of
25 a pattern or generalized course of conduct, the acts were repeated by the Defendants and a real
26 or substantial potential for repetition by the Defendants exists.
27

353. Unless restrained and enjoined by this Court, Defendants will persist in their activities, causing irreparable harm and injury to CALLUM for which there is no adequate remedy at law.

354. As a direct and proximate consequence of the unfair and deceptive acts and practices taken by the Defendants against CALLUM, CALLUM has suffered actual, consequential, and general losses in an amount to be proven at trial.

355. The Defendant's unfair acts and practices were committed willfully and with full knowledge, and CALLUM is entitled to trebling of his actual damages award and the reasonable attorney's fees incurred in the preparation and prosecution of this action pursuant to SC. Code Ann. § 39-5-140.

SIXTEENTH CAUSE OF ACTION

357. CALLUM hereby incorporates by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

358. An actual controversy now exists in that CALLUM is informed and believes and thereon alleges that Defendants are in violation of the laws of the United States including, but

1 not limited to, Title III of the Americans with Disabilities Act and Accessibility Regulations,
2 the Civil Rights Act of 1964, and the Patient Protection and Affordable Care Act.

3 359. A declaratory judgment is necessary in that CALLUM contends and Defendants
4 deny that Defendants are required to modify their policies, practices and procedures at
5 Defendants' public accommodation, that CALLUM suffered discrimination as a result of
6 Defendants' failure to modify practices, policies and procedures and/or that Plaintiff is entitled
7 to injunctive relief under federal laws.

8
9 360. CALLUM prays for judgment and relief as set forth herein.

10 **SEVENTEENTH CAUSE OF ACTION**

11 **INJUNCTIVE RELIEF**

12 361. CALLUM hereby incorporates by reference each of the allegations set forth in
13 the preceding paragraphs as if realleged fully herein.

14 362. CALLUM will suffer irreparable harm unless Defendants are ordered to modify
15 policies, practices and procedures regarding the admission of people with disabilities to
16 conform with the rights and privileges provided by the statutes and regulations referenced
17 herein, above. CALLUM has no adequate remedy at law to redress the discriminatory conduct
18 of Defendants.

19
20 363. CALLUM therefore seeks injunctive relief to redress the injuries suffered.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff CALLUM respectfully prays for judgment on the above-
23 alleged causes of action against Defendants as follows:

- 24 1. An order enjoining Defendants from violating disabled access laws of the United States;
25 2. That the Court declare the respective rights and duties of Plaintiff and Defendants as to the
26 modification of Defendants' policies, practices and procedures regarding the reasonable
27

1 accommodation of disabled African-American male United States Marine Corps veterans
2 who suffer from service-connected PTSD and PTSD-related symptoms including, though
3 not limited to, PTSD-associated agoraphobia;

4 3. Enter a declaratory judgment finding that Defendants' actions described above constitute
5 discrimination on the basis of race, color, national origin, ethnicity, or ancestry, and violate
6 42 U.S.C. §§ 1981 and 2000d;

7
8 4. Declare that Defendants' conduct in denying CALLUM access to health care, health
9 services, and/or prescription pharmaceuticals because of his disability, race and gender
10 status violates non-discrimination provisions of the Affordable Care Act;

11 5. Enter a permanent injunction directing Defendants CVS CAREMARK CORPORATION,
12 SOUTH CAROLINA CVS PHARMACY, LLC, and CVS PHARMACY, INC., to take all
13 affirmative steps necessary to remedy the effects of illegal, discriminatory conduct
14 described herein and to prevent similar occurrences in the future;

15 6. An order awarding Plaintiff actual and/or statutory damages for violation of civil rights and
16 for restitution for each and every offense and for each and every day Plaintiff was denied
17 access to Defendants' facilities;

18
19 7. Pursuant to 42 U.S.C. § 1981, award compensatory damages to Plaintiff in an amount
20 determined by the jury that would fully compensate CALLUM for the injuries, emotional
21 harm, mental anguish, embarrassment, humiliation, and degradation caused by Defendants'
22 misconduct alleged in this Complaint;

23 8. Pursuant to 42 U.S.C. § 1981, award punitive damages to Plaintiff in an amount determined
24 by the jury, but no less than three times the amount of actual damages, that would punish
25 Defendants for the intentional, willful, wanton, and reckless misconduct alleged in this
26

1 Complaint and that would effectively deter Defendants from future discriminatory
2 behavior;

3 9. Statutory disbursements, costs, expert fees, and attorney's fees authorized under 42 U.S.C. §
4 1988(b), and such further and other relief as the Court deems just and proper;

5 10. Pursuant to 42 U.S.C. § 18116, award compensatory damages to Plaintiff in an amount
6 determined by the jury that would fully compensate CALLUM for the injuries, emotional
7 harm, mental anguish, embarrassment, humiliation, and degradation caused by Defendants'
8 misconduct alleged in this Complaint;

9 11. Pursuant to 42 U.S.C. § 18116, award punitive damages to Plaintiff in an amount
10 determined by the jury, but no less than three times the amount of actual damages, that
11 would punish Defendants for the intentional, willful, wanton, and reckless misconduct
12 alleged in this Complaint and that would effectively deter Defendants from future
13 discriminatory behavior;

14 12. Award Plaintiff damages in an amount to be determined at trial to compensate him for
15 being deprived of his right to shop and make or enforce contracts as a customer of a retail
16 pharmacy regardless of his perceived race, color, national origin, ethnicity, or ancestry,
17 including damages for fear, humiliation, embarrassment, mental pain, suffering,
18 inconvenience, and financial injury;

19 13. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
20 torts of assault;

21 14. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
22 torts of battery;

23 15. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
24 tort of false imprisonment;

- 1 16. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
2 tort of civil conspiracy;
- 3 17. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
4 tort of intentional infliction of emotional distress;
- 5 18. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
6 tort of negligence;
- 7 19. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
8 tort of negligent supervision and/or negligent retention;
- 9 20. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
10 tort of interference with contract and/or prospective contractual relations;
- 11 21. Award Plaintiff damages in an amount to be determined at trial to compensate him for the
12 Defendants' engaging in unfair trade practices;
- 13 22. Award Plaintiff statutory punitive damages in an amount equal to no less than three times
14 Plaintiff's damages, that would punish Defendants for their malicious, willful, wanton,
15 callous, and reckless conduct and effectively deter Defendants from engaging in similar
16 conduct, including, though not limited to, unfair trade practices, in the future;
- 17 23. Award Plaintiff prejudgment and post-judgment interest;
- 18 24. For an order requiring Defendants to show cause, if any he/she/it has, why he/she/it should
19 not be enjoined as hereinafter set forth, during the pendency of this action;
- 20 25. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all
21 enjoining Defendants, each of them, and their agents, servants, and employees, and all
22 persons acting under, in concert with, or for them;
- 23
24
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26
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1 26. Pursuant to 42 U.S.C. § 1981, *et seq.*, 42 U.S.C. § 1988(b), 42 U.S.C. § 12101, *et seq.*, and
2 42 U.S.C. § 18116, and/or as otherwise allowable by statute or law, award Plaintiff his
3 reasonable attorneys' fees and costs; and

4 27. Order all other and further relief as the Court may deem equitable, just and proper.
5

6
7 **DEMAND FOR TRIAL BY JURY**

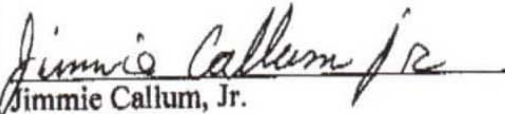
8 Plaintiff demands a trial by jury for all issues triable by jury.
9

10 **VERIFICATION**

11 I, JIMMIE CALLUM, Jr., am the Plaintiff in the above entitled action and proceeding. I have
12 read the foregoing VERIFIED COMPLAINT FOR DAMAGES AND DECLARATORY and
13 INJUNCTIVE RELIEF for: VIOLATIONS OF THE AMERICANS WITH DISABILITIES
14 ACT of 1990 [42 U.S.C. § 12101, *et seq.*]; DISCRIMINATION IN VIOLATION OF THE
15 CIVIL RIGHTS ACT of 1964 [42 U.S.C. § 1981 (equal rights); § 1985 (conspiracy to interfere
16 with civil rights); § 1986 (neglect to prevent deprivation of rights); 42 U.S.C. § 2000d, *et seq.*];
17 DISCRIMINATION IN VIOLATION OF THE AFFORDABLE CARE ACT [42 U.S.C. §
18 18116]; ASSAULT; BATTERY; FALSE IMPRISONMENT; INTENTIONAL INFLICTION
19 OF EMOTIONAL DISTRESS; CIVIL CONSPIRACY; NEGLIGENCE; NEGLIGENT
20 SUPERVISION &/or RETENTION; INTERFERENCE WITH CONTRACT &/or
21 PROSPECTIVE CONTRACTUAL RELATIONS; and UNFAIR TRADE PRACTICES, and
22 know its contents. The facts stated therein are true and within my personal knowledge, except
23 as to matters therein stated on information and belief, and as to those matters I believe them to
24 be true, and if called upon to testify I would competently testify as to the matters stated herein.
25
26
27

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct.

3 Executed on September 15, 2014.

4 
5 Jimmie Callum, Jr.

6 DATED: September 15, 2014

7 Respectfully submitted,

8 
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